COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
NOTICE OF PUBLIC OVERSIGHT HEARING

1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC OVERSIGHT HEARING

on

The Department of Consumer and Regulatory Affairs: What Issues Should the Committee Pursue?

on

Wednesday, February 6, 2019
11:00 a.m. Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces a public oversight hearing before the Committee of the Whole seeking public comment on what issues at the Department of Consumer and Regulatory Affairs should the committee pursue during Council Period 23. The hearing will be held at 11:00 a.m. on Wednesday, February 6, 2019 in Room 123 of the John A. Wilson Building.

The purpose of the hearing is to elicit public comment on the critical issues related to the services and programs provided by the Department of Consumer and Regulatory Affairs with input from a variety of stakeholders. The Committee is particularly interested in hearing from those individuals and groups that have frequent interaction with the agency, including property owners, tenants, businesses, contractors, developers, vocational professionals and advocates. The Committee also seeks feedback about the agency's newly implemented service improvements. Testimony at this hearing will be limited to members of the public (including non-government organizations).

Those who wish to testify are asked to email the Committee of the Whole at cow@dccouncil.us, or call Blaine Stum, Legislative Policy Advisor, at 202-724-8196, and to provide your name, address, telephone number, organizational affiliation and title (if any) by close of business Friday, February 1, 2019. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on Friday, February 1, 2019 the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to five minutes; less time will be allowed if there are a large number of witnesses.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on February 20, 2019.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
WITNESS LIST

1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC OVERSIGHT ROUNDTABLE

on

The Department of Consumer and Regulatory Affairs:
What Issues Should the Committee Pursue?

on

Wednesday, February 6, 2019 at 11 a.m.
Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

WITNESS LIST

1.	Mark Eckenwiler	Commissioner, ANC 6C04
2.	Renee Bowser	Commissioner, SMD 4D02
3.	Chuck Elkins	Commissioner, ANC 3D01
4.	Corey Holman	Public Witness
5.	Randi Marshall	Apartment and Office Building Association of Metropolitan Washington
6.	Matthew Weaver	Daro Management
7.	Yesmin Sayin Taylor	D.C. Policy Center
8.	Beth Harrison	Legal Aid Society of the District of Columbia
9.	Emily Annick	Public Witness
10.	Lisa Mallory	District of Columbia Building Industry Association
11.	Brooke Fallon	Institute for Justice
12.	Joe Gersen	Public Witness
13.	Alicia Hunt	Public Witness

14.	Alan Gambrell	Public Witness
15.	Anne Cunningham	Children's Law Center
16.	Erika Wadlington	D.C. Chamber of Commerce
17.	Betsy McDaniel	Public Witness
18.	Michael Sindram	Public Witness
19.	Kaitlin Peter	D.C. Association of Realtors

The Department of Consumer and Regulatory Affairs: What Issues Should the Committee Pursue?

Committee of the Whole Roundtable
February 6, 2019

Presented by Mark Eckenwiler, Commissioner, ANC 6C04

Mr. Chairman and Members of the Committee,

Two years ago, the Committee posed the same question under consideration this morning: what DCRA issues should the Committee pursue?

ANC 6C provided written and in-person testimony identifying seven areas meriting the Committee's attention. (A copy is appended as Attachment A.) ANC 6C was unable to consider the question this year owing to the timing of the notice for today's roundtable. My testimony today reflects my individual views, and—until we meet on February 13 to vote—not necessarily those of ANC 6C.

Of the seven areas we identified in 2017, six remain in urgent need of Council scrutiny.

1. **Public access to construction permit documents**
2. **Construction permit application review**
3. **Issuance of after-hours permits**
4. **Office of the Zoning Administrator**
5. **Vacant building enforcement**
6. **Stop-work orders and collection of associated fines**

1. Public access to construction permit documents

As you've heard me say countless times, District FOIA law requires DCRA to post all construction permit application documents—plans, drawings, etc.—on a website for public access at no cost.[1] DCRA is not now and never has been compliant with this law. After we took our concerns to the Office of Open Government in 2015, that office issued a scathing letter[2] on January 29, 2016 stating that "DCRA is woefully out of compliance with FOIA" and criticizing DCRA's practice of forcing residents to pay an outside service to make paper copies of such records.

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[1] *See* D.C. Official Code §2-536(a)(8A).

[2] A copy of that letter can be viewed online at http://www.open-dc.gov/sites/default/files/OOG%20002_1.29.16%20AO_Redacted.pdf.

In 2016, the Council appropriated $2.98 million for DCRA to create the required website, but a solution is still not in place. As ANC 6C explained in its March 2018 testimony for DCRA budget oversight, the current "prototype" system, e-Records,

- offers only spotty coverage of the universe of current permit documents;
- is not updated promptly, meaning that residents lack timely access to the few documents available; and
- uses a proprietary viewer that does not allow document downloads or printing.

Because the current regulations give an adjacent property owner only 10 days to file an appeal with OAH after a permit is issued,[3] the practical result is that homeowners are routinely denied the opportunity to challenge improper permits that may result in serious damage to their homes. Appeals to BZA may be filed as much as 60 days later, but here, too, e-Records does not offer timely, reliable access to the documents necessary for such appeals.

Two years ago, ANC 6C suggested that the Council amend the construction code to give residents more time to appeal permits to OAH in view of the difficulty of obtaining relevant records. That recommendation remains a sound one.

In addition, the Council should ask the Auditor to investigate how the $2.98 million dollars given DCRA starting in FY17 was used and why the promised system—which DCRA indicated could be created in 24 months—does not exist.

2. **Construction permit application review**

DCRA continues to approve permits on the basis of facially deficient application documents. In 2018 alone, ANC 6C

- filed a BZA appeal (19813) for a permit where the drawings not only contained numerous false dimensions for the existing structures, but also failed to distinguish between existing conditions and the proposed work. Without such clear distinctions—which are required by the regulations[4]—DCRA is simply incapable of assessing whether a project complies with the zoning regulations. (DCRA revoked the permit in question after the filing of the BZA appeal.)

- identified a certificate of occupancy issued in clear error by DCRA. After substantial effort by ANC 6C documenting the obvious noncompliance with important provisions of the zoning regulations, DCRA relented and revoked that C of O.

The Council should explore the reasons for these recurring failures.

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[3] *See* 12A DCMR § 112.2.1.

[4] *See* 12A DCMR § 106.1.12.

As ANC 6C has pointed out in years past, DCRA's lax permit review not only tolerates but affirmatively encourages unscrupulous actors. The potential rewards for filing an incomplete or facially inadequate application—both in terms of lowered compliance costs and in terms of the ability to build illegally large structures—far outweigh any potential downside.

3. Issuance of after-hours permits

The construction code imposes stringent limits on when overnight or Sunday work may be conducted in or near residential districts,[5] but DCRA has repeatedly ignored those restrictions to the detriment of residents in ANC 6C and elsewhere. Sometimes DCRA ignores an applicant's false statement about whether the work is within 500' of a residential zone; at other times, DCRA improperly issues permits for noisy construction work throughout the night for several weeks, severely disrupting residents' ability to sleep.

ANC 6C wrote to the Council in September 2017 noting these problems and urging the Council to adopt legislation narrowing and clarifying the standard for after-hours permit approval.[6] Although DCRA has a pending a rulemaking to revamp the Construction Codes, the Council should not await the outcome of that potentially lengthy process, but instead act to address this urgent issue.

4. Office of the Zoning Administrator

The Zoning Administrator plays a critical gatekeeper role: he reviews building permit applications to ensure that they comply with the zoning regulations, and where necessary withholds approval until an applicant obtains required relief from the BZA or Zoning Commission. He also oversees enforcement against work performed in violation of the zoning regulations (either without or inconsistent with issued permits). When this system breaks down, illegal work often avoids public scrutiny and is allowed to remain in place, to the detriment of neighbors and others in the community.[7]

Our repeated experience has been that Zoning Administrator Matt LeGrant ignores obvious zoning problems even when they are brought directly to his attention, and that at times his interpretations of the regulations are arbitrary, capricious, and inconsistent over time. ANC 6C's testimony over the past three years documents repeated instances of this dereliction, and I will not recite them again here. Suffice it to say that since November 2015, ANC 6C has filed four different BZA appeals; in each one, the defective permit was revoked, surrendered, or revised in acknowledgment of its noncompliance.

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[5] *See* 12A DCMR § 105.1.3.

[6] *See* Attachment B.

[7] As noted in section 1 above, DCRA's policy of making permit application documents largely inaccessible to the public—in clear violation of District law—substantially hinders outside review of such errors.

More disturbingly, Mr. LeGrant gave false testimony under oath before the BZA last fall on an important administrative issue (*i.e.*, when DCRA deems an application "accepted as complete," an important requirement under several grandfathering provisions in the zoning regulations). This flagrant dishonesty on the part of a public official is completely unacceptable.

The Council should closely examine not only the work of this office, but also the need to require the ZA to be a licensed professional (such as an architect or attorney). In our comments on 2018 Department of Buildings Establishment Act, ANC 6C made specific recommendations on this issue.[8]

5. **Vacant building enforcement**

As ANC 6C testified before the Committee at the fall 2017 roundtable in the wake of the Auditor's report, ANC 6C's experience is that DCRA's Vacant Building Enforcement Unit is slow to act and unresponsive to requests, even those from ANC commissioners that include detailed information (such as photos, etc.) about blighted properties. I urge the Committee to continue aggressive oversight of VBEU so residents see meaningful action to address eyesore properties across the District.

6. **Stop-work orders and collection of associated fines**

In August 2017, ANC 6C wrote the following in a letter to the Chairman:

> [O]ne question meriting further attention is whether DCRA makes full and consistent use of the fine schedules for construction and housing violations, both in terms of the initial amount in the notice of violation and with respect to the sums ultimately collected. Although the regulations have an escalating schedule of fines for repeat violators—see 16 DCMR § 3201—our sense is that higher fines are rarely (if ever) imposed. Worse, even when DCRA imposes fines, it appears that they frequently forgive some or all of the fine amount.

The Committee should look into this issue to determine whether the laws are being applied as written, and whether DCRA's practices adequately deter future violations. Our sense is that they do not.

* * *

Thank you for the opportunity to testify. I welcome any follow-up questions the Committee may have.

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[8] "The [Zoning Administrator] should be Council-confirmed; term-appointed; removable only for cause; and subject to certain minimum qualifications. In addition to senior-level work experience, those qualifications should express a preference for candidates who hold a graduate degree in law, architecture, or land use/urban planning." Testimony of ANC 6C (appended as Attachment C).

Written Testimony of Advisory Neighborhood Commission 6C
Before the Committee of the Whole
on
The Department of Consumer and Regulatory Affairs:
What Issues Should the Committee Pursue?

Roundtable Date: February 21, 2017

Presented by Mark Eckenwiler, Commissioner, ANC 6C04

Mr. Chairman and Members of the Committee,

As we previously recounted in our 2016 testimony before the Committee on Business, Consumer, and Regulatory Affairs,[1] DCRA's failure to honor its obligations under the law takes several forms. These include

- careless, inadequate review of building permit applications
- improper issuance of permits on facially deficient (or even fraudulent) applications
- unresponsiveness of Zoning Administrator Matt LeGrant (and others in his office) to legitimate concerns
- ongoing lack of public access to critical construction permit application documents

This systemic dysfunction rewards and incentivizes fraudulent permit applications; obstructs public access to basic information; and results in illegal construction that often does serious damage to the homes of adjacent residents.

In response to the Committee's request for issue areas to pursue in the new Council period, ANC 6C has identified seven topics meriting the Committee's attention:

1. **Public access to construction permit documents**
2. **Construction permit application review**
3. **Issuance of after-hours permits**
4. **Office of the Zoning Administrator**
5. **Vacant building enforcement**
6. **Stop-work orders and collection of associated fines**
7. **Need for additional construction inspectors, especially on Sundays and holidays**

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[1] ANC 6C testified at both the February 29, 2016 oversight hearing and the July 13, 2016 oversight roundtable.

1. Public access to construction permit documents

District FOIA law requires DCRA to post all construction permit application documents—plans, drawings, etc.—on a website for public access at no cost.[2] DCRA is not now and never has been compliant with this law. After we took our concerns to the Office of Open Government in 2015, that office issued a scathing letter[3] on January 29, 2016 stating that "DCRA is woefully out of compliance with FOIA" and criticizing DCRA's practice of forcing residents to pay an outside service to make paper copies of such records.

Last year the Council appropriated funds for DCRA to create the required website, but a solution is still not in place. In the meantime, citizens continue to be rebuffed when they ask for electronic copies of plans. (In fact, in a January 2017 letter to Councilmember Grosso, DCRA Director Bolling even asserted that the statute does not require DCRA to make electronic copies available at no cost. *See* Attachment A.)

Because the current regulations give an adjacent property owner only 10 days to file an appeal with OAH after a permit is issued,[4] the practical result is that homeowners are routinely denied the opportunity to challenge improper permits that may result in serious damage to their homes. (By contrast, appeals to BZA may be filed as much as 60 days later.)

We suggest two specific action items here: 1) If the public records right-of-access law doesn't require documents to be made available for free—and we think it's clear that it does—then the Council should amend the statute immediately. Second, the Council should consider amending the construction code to give residents more time to appeal permits to OAH in view of the difficulty of obtaining relevant records.

2. Construction permit application review

In our experience, DCRA regularly issues permits that do not comply with important provisions of the building code and fire code. These deficiencies include

- Acceptance of unsigned application forms, where the signature would attest to the truthfulness and sufficiency of the application
- Acceptance of applications that lack a DC Surveyor-certified plat, or even any plat at all. (Lacking this basic information, there is no way the Zoning Administrator can competently assess an application for potential zoning issues.)

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[2] *See* D.C. Official Code §2-536(a)(8A).

[3] A copy of that letter is attached to ANC 6C's January 2016 and July 2016 written testimony. It can also be viewed online at http://www.open-dc.gov/sites/default/files/OOG%20002_1.29.16%20AO_Redacted.pdf

[4] *See* 12A DCMR § 112.2.1.

- Acceptance of applications for major work, including structural work, where the submitted drawings are not stamped by a DC-licensed architect and/or structural engineer, as appropriate.
- Acceptance of applications for major work on habitably space where the drawings are stamped only by an engineer, not an architect—and where the engineer is licensed only in a field such as electrical engineering.

The Council should explore the reasons for these recurring deficiencies.

We also note that in its lax approach to permit applications, DCRA thereby not only tolerates but affirmatively encourages unscrupulous actors. The potential rewards for filing an incomplete or facially inadequate application—both in terms of lowered compliance costs and in terms of the ability to build illegally large structures—far outweigh any potential downside. (In the case of 518 6th St. NE—where we eventually succeeded in having the permit revoked via BZA Appeal No. 19207—we have no evidence that DCRA ever took any punitive action for the filing of plainly fraudulent application drawings. No fines were levied,[5] and so far as we are aware DCRA never attempted to refer the applicant for false-statement prosecution.)

3. Issuance of after-hours permits

The construction code imposes stringent limits on when overnight or Sunday work may be conducted in or near residential districts,[6] but DCRA has repeatedly ignored those restrictions to the detriment of residents in ANC 6C and elsewhere. Sometimes DCRA ignores an applicant's false statement about whether the work is within 500' of a residential zone; at other times, DCRA improperly issues permits for noisy construction work throughout the night for several weeks, severely disrupting residents' ability to sleep.

4. Office of the Zoning Administrator

The Zoning Administrator plays a critical gatekeeper role: he reviews building permit applications to ensure that they comply with the zoning regulations, and where necessary withholds approval until an applicant obtains required relief from the BZA or Zoning Commission. He also oversees enforcement of work performed in violation of the zoning regulations (either without or inconsistent with issued permits). When this system breaks down, illegal work often avoids public scrutiny and is allowed to remain in place, to the detriment of neighbors and others in the community.[7]

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[5] DCRA did issue several stop-work orders for assorted violations. It is also unclear to what extent fines were levied and collected for those separate infractions.

[6] *See* 12A DCMR § 105.1.3.

[7] As noted in part 1 above, DCRA's policy of making permit application documents largely inaccessible to the public—in clear violation of District law—substantially hinders outside review of such errors.

Our repeated experience has been that Zoning Administrator Matt LeGrant ignores obvious zoning problems even when they are brought directly to his attention, and that at times his interpretations of the regulations are arbitrary, capricious, and inconsistent over time.

In the case of 518 6th St. NE, Mr. LeGrant approved multiple permits even though the applications in question lacked essential information (such as a plat and complete zoning analysis calculations). Even worse, as set forth in our BZA 19207 statement, Mr. LeGrant simply ignored repeated, detailed complaints for more than five weeks, forcing ANC 6C to expend significant time and energy to prepare and file that appeal before the 60-day deadline passed.

Although 518 6th St. exemplifies Mr. LeGrant's casual attitude toward the law (and toward concerns raised by individual residents or even ANCs), it is hardly an isolated case. In April 2013, the 6C04 Commissioner emailed Mr. LeGrant to flag a defect in the plans for 301 H St. NE. Under the H St. zoning overlay (11 DCMR 1324.10), "[m]ultiple-dwellings shall have at least one (1) primary entrance on H Street directly accessible from the sidewalk." In May 2013, and again in April 2014 in response to a followup inquiry, Mr. LeGrant provided written assurance that "this important provision" (as LeGrant put it) would be enforced. This building has now been constructed with a single primary residential entrance on 3rd St., and only a secondary emergency point of access on H St.

Similarly, in late 2013 and early 2014 several obvious construction and zoning code violations for 507 K St. NE were brought to DCRA's attention in writing and in person by the 6C05 Commissioner and others. (These included the construction of a new open court far narrower than the required ten feet and inconsistent with the submitted drawings.) Although DCRA admitted in writing that the objection was valid—*see* January 31, 2014 email from DCRA spokesperson Matt Orlins to 6C05 Commissioner Mark Kazmierczak—DCRA took no curative action other than the meaningless step of "requiring the applicant to revise the plans to reflect the as-built conditions." In a February 7, 2014 email, Orlins again admitted that the construction violated the zoning regulations, but announced that DCRA would take no corrective action.[8]

Some of Mr. LeGrant's most egregious misapplications of law relate to the façade preservation provisions of the H St. overlay.[9] In October 2013, residents and commissioners observed that 1001 H St. NE—for which the approved plans included an FAR bonus for façade preservation[10]—had been razed except for one party wall shared

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[8] Copies of the relevant email messages are available on request.

[9] To summarize, the regulations allow a floor-area-ratio bonus for projects that preserve pre-1958 facades. *See, e.g.* 11 DCMR 1321.3, 1322.3 & 1323.4.

[10] *See* http://dcra.dc.gov/sites/default/files/dc/sites/dcra/release_content/attachments/Det_Let_re_1001_H_St.%2C_NE_to_Davies_7-31-12.pdf

with the adjoining property to the east. It later emerged that Mr. LeGrant had, in consultation with the applicant, secretly approved this destruction of the building on the astonishing theory that keeping this party wall, which has no public-facing exterior and no architectural detail or ornamentation, qualified as "façade preservation."

When challenged in late 2013, Mr. LeGrant sought to justify this remarkable result by assuring our counterparts in ANC 6A that the owner would be required to "preserve the previous building façade, by a process of disassembly, storage, and reconstruction" [*sic*].[11] Although LeGrant expressly promised that "DCRA will continue to monitor the construction to ensure that ... the façade materials slated for reassembly are in fact restored properly," the owner was instead allowed to construct a new building using all-new materials except for a small section of plain brick surrounding the corner entrance.[12]

The Council should closely examine not only the work of this office, but also the need to require the ZA to be a licensed professional (such as an architect or attorney).

5. Vacant building enforcement

Councilmember Silverman's vacant-building legislation, enacted last year, significantly improved District law. However, changing the law is not enough. ANC 6C's experience is that DCRA's Vacant Building Enforcement Unit is slow to act and unresponsive to requests, even those from ANC commissioners that include detailed information (such as photos, etc.) about blighted properties. We urge the Committee to monitor this unit closely to ensure that the new law is carried out.

6. Stop-work orders and collection of associated fines

We also urge the Committee to look at DCRA's actual practice with respect to stop-work orders and associated fines. Although the regulations have an escalating schedule of fines for repeat violators,[13] our sense is that higher fines are rarely (if ever) imposed. Worse, even when DCRA imposes fines, it appears that they frequently forgive some or all of the fine amount.

We ask that the Committee look into this issue to determine whether the laws are being applied as written, and whether DCRA's practices adequately deter future violations. Our sense is that they do not.

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[11] *See* http://anc6a.org/wp-content/uploads/BensChiliBowlLeGrantEmail.pdf

[12] We include as Attachment B a copy of our pending rulemaking petition before the Zoning Commission (ZC 16-19) describing these improprieties in greater detail.

[13] *See, e.g.*, 16 DCMR § 3201.

7. **Need for additional construction inspectors, especially on Sundays and holidays**

In recent years, the Council has appropriated much-needed additional funding for DCRA construction inspection staffing outside of normal work hours. The result has been a material improvement over past years in DCRA's responsiveness to complaints about illegal work at night, on Sundays, and on holidays.

However, illegal after-hours construction remains a serious concern both within the boundaries of ANC 6C and elsewhere in the District. Inspectors often take hours to return a complainant's phone call, and in some cases do not respond at all. Accordingly, we urge the Committee to investigate whether existing resources are being properly allocated or whether additional staff funding is required to meet the existing need.

We thank you for the opportunity to provide testimony and welcome any followup questions the Committee may have.

Attachment A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE DIRECTOR

January 19, 2017

Councilmember David Grosso
1350 Pennsylvania Ave. NW
Washington, DC 20004

Dear Councilmember Grosso:

Thank you for acknowledging the progress that the Department of Consumer and Regulatory Affairs (DCRA) has made thus far in improving our compliance with the District's open government law in your December 9, 2016 letter. With respect to the questions posed in the letter, I will take each question individually.

How is the Department allowing members of the public to inspect records, prior to deciding whether to make a copy?

1. Customers may schedule an appointment to review any available plans prior to determining whether they would like to procure copies from an approved vendor. We have added language to that effect to the web page dedicated to the plans access process.

Why are members of the public being forced to go to a third party contractor in order to get copies of certain records? Relatedly, why are members of the public being forced to pay a fee for these records that by law are meant to be available online and free of charge?

2. DCRA directs customers to use an approved third-party vendor for copies of plans because the agency does not have the capacity or equipment to provide copies of the very large plans documents. Although the agency is developing an electronic system capable of providing free access to plans documents, the Freedom of Information Amendment Act of 2000 does not explicitly state whether the documents must be provided without cost. Moreover, the law's committee report from 2000 does not include a formal fiscal impact statement despite the law referencing its adoption of the fiscal impact statement from the committee report. Consequently, questions remain about how the requirements were to be funded.

What training or instructions are customer service representatives at the Department receiving in order to improve their response to inquiries from members of the public?

3. In the last quarter of 2016, DCRA reassigned its Freedom of Information Act (FOIA) function to the Office of the General Counsel, so that the requests would be handled by licensed attorneys. The change has resulted in faster processing times for FOIA requests and reduced confusion about what requests should be addressed without the need for a FOIA request.

As requested, I am attaching a list of the vendors approved to provide copies for the public. The agency did not budget to absorb of the costs of copies from third-party vendors. The agency has opted to devote any available dollars to the development of the electronic system, which will eventually provide the full access to plans documents contemplated by the law.

Sincerely,

Melinda Bolling

Melinda Bolling

Attachment B

DISTRICT OF COLUMBIA
ZONING COMMISSION

Statement of Advisory Neighborhood Commission 6C
in Support of Petition for Rulemaking to Amend
the H Street Northeast Neighborhood Mixed-Use Zone Regulations

INTRODUCTION

A decade has passed since the Zoning Commission created what was then called the H Street Northeast Neighborhood Commercial Overlay. *See* ZC Order No. 04-27 (Jan. 9, 2006). Over the course of those ten years, the Overlay has shaped and guided enormous, and almost uniformly positive, changes to H Street. Hundreds of new housing units, a new grocery store, and new retail and dining establishments have enlivened the corridor, with additional projects approved or in the process of being built.

Crucial to that success has been H Street's historic character. As the Office of Planning (OP) noted in the 2003 report that spurred adoption of the Overlay, "[t]he H Street corridor retains a distinctive collection of historic commercial buildings that reflect the history of the people that lived, worked, and shopped there."[1] From the beginning, OP noted the potential for these two- to four-story brick buildings from the late 19th and early 20th century to drive economic rebirth:

> Numerous studies have underscored the important role that historic preservation plays in revitalizing older neighborhoods and commercial centers throughout the U.S. It is often the quality and character of historic buildings and settings that attract initial reinvestment in economically blighted areas.[2]

In adopting the Overlay, and thereby laying the foundation for the economic turnaround that followed, the Zoning Commission likewise recognized the value and importance of this historic urban fabric. Thus, the regulations spoke—and still speak—directly to the need to "[e]ncourage new construction to preserve existing façades constructed before 1958" and to "[e]stablish design guidelines for new and rehabilitated buildings that are consistent with [H Street's] historic character and scale." *See* 11 DCMR subtitle H, §§ 900.1(c) & (d). In particular, the Commission created density bonuses for the preservation of historic façades.

Unfortunately, ANC 6C's experience over the past decade is that Zoning Administrator Matt LeGrant does not consistently respect the existing regulations. He has rendered opinions that substantially undermine these rules and the underlying policy goals, at different times taking irreconcilably varying positions on façade preservation issues. Worse, in at least one case he

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[1] *Revival: The H Street NE Strategic Development Plan*, DC Office of Planning (2003) at 19 (available online at http://planning.dc.gov/publication/h-street-corridor-revitalization-main-page).

[2] *Id.*

knowingly condoned the total destruction of a historic structure while nevertheless granting a façade-preservation density bonus to the owner of the razed property.

We believe that these decisions and practices are not consistent with the current regulations. In order to foreclose future abuses, we ask the Commission to amend the regulations to clarify, and make more explicit, the applicable façade-preservation rules and design requirements. As indicated below, ANC 6A—the only other ANC in whose boundaries the Overlay falls—has voted unanimously to support these amendments in principle.

A copy of the proposed new text is attached at Tab A, and we discuss these proposals in detail below.

FAÇADE PRESERVATION

The Current Problem

Just as in the original 2006 Overlay, the reorganized 2016 zoning regulations (for what are now called the H Street Northeast Neighborhood Mixed-Use Zones) provide an incentive for applicants to "preserve[] an existing façade constructed before 1958." Subtitle H, §§ 902.2-.4 (offering floor-area-ratio bonuses in zones NC-9 through NC-17). However, the regulations do not define "façade," nor do they describe what constitutes preserving one.

Unfortunately, Zoning Administrator Matt LeGrant has adopted a variety of interpretations that ignore—and in at least one case, openly defy—the common meaning of these terms and the purpose of the regulations. The areas affected by these misguided interpretations include these:

What qualifies as a "façade"?
In one especially egregious case—1001 H St. NE, now Ben's Chili Bowl—the Zoning Administrator allowed the applicant to count all four exterior walls of this corner structure as "façade." This included 1) a south-facing wall not visible from H St., with no architectural detailing or ornament, and 2) the party wall with 1005 H St. NE to the east.[3]

[3] *See* Letter from R. Tony Marshall of RAM Contracting Services, LLC to Matt LeGrant, June 14, 2013 ("Ben's Chili Bowl Letter"; copy at Tab B). That letter states that "we are preserving 99% of the (east) existing party wall .... This alone accounts for 33% of the total building being preserved." *Id.* at 1. It is clear that this letter memorialized a previous agreement with LeGrant, as his office had given zoning approval to the application two months earlier on April 8, 2013. *See* DCRA Reviewer Notes for Permit B1301584 (noting that applicant was "preserving an existing historic building façad [*sic*] which increases allowble far [*sic*] to 2.0") (copy at Tab C).

Moreover, on June 21, 2013, LeGrant emailed RAM Contracting to endorse the plan described in their June 14 letter. *See* LeGrant Email Exchange with Subject Line "Ben's Chili Bowl – Preservation Letter 6-14-2013" (copy at Tab D).

In April 2014, LeGrant issued a determination letter for another corner property (654 H St. NE) in which he opined that "preservation of both the H St and 7th St facades will count toward the overall preservation ratio."[4] Less than 18 months later, LeGrant issued a diametrically opposed letter for a different corner property, 528 H St. NE, in which he stated, "I conclude that only the H Street façade of a building must be preserved in order to trigger the above density bonus provisions."[5]

What percentage of the "façade" must be preserved?

The Ben's Chili Bowl Letter stated an intent to preserve "60% of the existing building materials," of which the invisible, undecorated east party wall comprised more than half. Tab B at 1. As noted earlier, LeGrant himself ratified this approach in writing. *See* Tab D.

In the later 654 H St. Letter, LeGrant declared that "[t]he standard to achieve preservation of a pre-1958 façade is to preserve a minimum of 50% of the total existing façade area." Tab E at 1. And the 528 H St. Letter—which, as noted above, required no preservation of the corner property's 6th St. façade—does not state any minimum percentage as to preservation of the H St. façade. *See* Tab F.

What constitutes "preserving" a façade?

In October 2013, the Chair of ANC 6A contacted LeGrant to protest the complete demolition of the historic 1001 H St. NE structure.[6] In his reply, LeGrant rejected the suggestion that a zoning violation had occurred, declaring that "the property owner has taken steps to preserve the previous building façade, ***by a process of disassembly, storage, and reconstruction, that is consistent with the façade preservation requirements***." (Emphasis added.)

LeGrant further stated that DCRA would monitor the project to ensure that "the façade materials slated for reassembly are in fact restored properly." To the contrary, the Zoning Administrator enforced no such requirement. The new façade at 1001 H St. is constructed of entirely new materials except for an ungainly, ahistorical corner portal with no architectural ornamentation or detailing of any kind.

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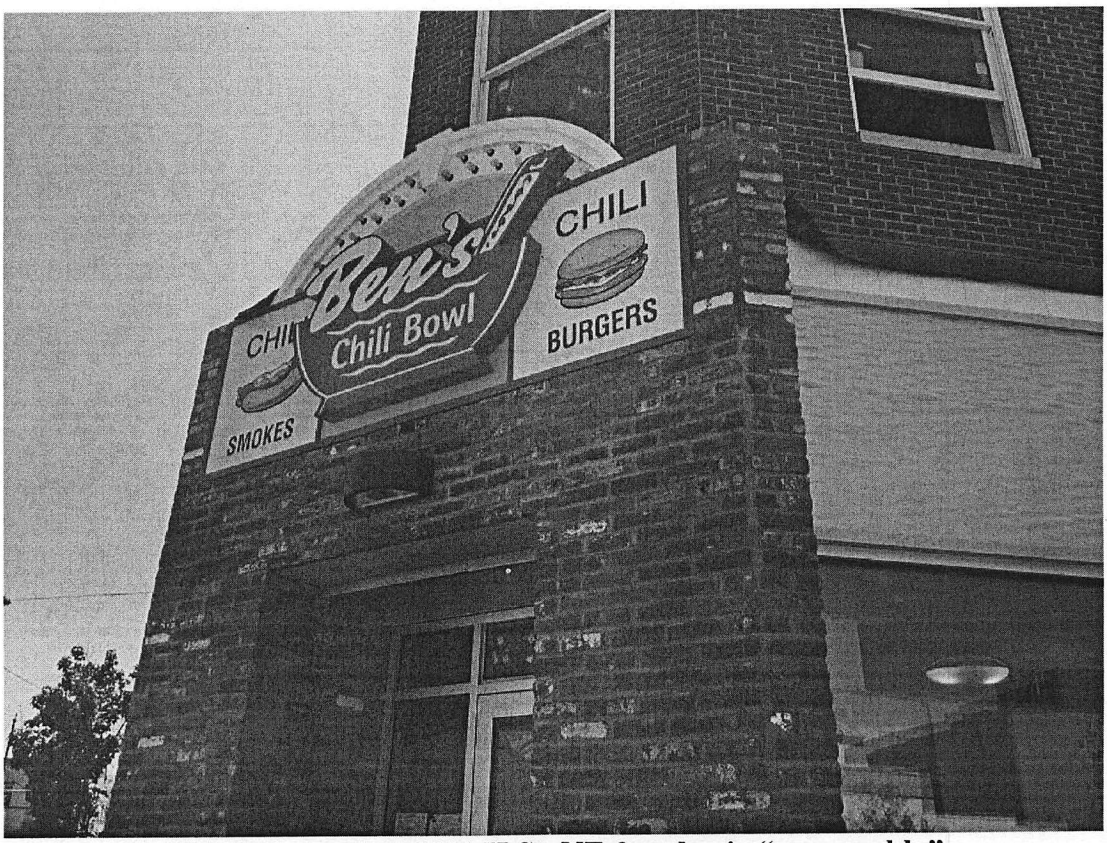
[4] Zoning Determination Letter from Matt LeGrant to Dario Davies concerning 646-654 H St. NE, April 23, 2014 ("654 H St Letter"; copy at Tab E) at 1.

[5] Zoning Determination Letter from Matt LeGrant to David Avitabile concerning 526-528 H St. NE ("528 H St. Letter"; copy at Tab F) at 2.

[6] *See* ANC 6A 2013 Email Exchange with Matt LeGrant at 3 ("There is now nothing left of the two buildings on this site. No notice came to the ANC about this destruction; no mention of a raze was made in the presentations before the ANC. Rather we were told about the preservation of the attractive old brick exterior.") (copy at Tab G).

1001 H St. NE prior to demolition



"Preservation" of 1001 H St. NE façade via "reassembly"

ANC 6C believes that the inconsistent and contradictory application—and in the case of 1001 H St. NE, gross misapplication—of the H St. façade preservation bonus regulations must stop. Zoning Administrator LeGrant's practices actively enable and encourage the destruction of H St.'s historic architectural fabric instead of protecting it.

The Proposed Amendments

Rather than attempt to combat the Zoning Administrator on a case-by-case, piecemeal basis, ANC 6C believes it is necessary for the Zoning Commission to clarify the façade-preservation rules in a manner that will authoritatively foreclose future harms. To that end, we propose the addition in subtitle H of a new section 902.7 addressing the ills recounted above.

Proposed section 902.7 begins by explicitly specifying a minimum percentage of historic façade area required to be preserved:

> For purposes of this chapter's façade preservation provisions,
>
> > (a) preservation shall require retaining a minimum of 90% of the façade area, including but not limited to mansard roofs, dormers, turrets, parapets, cornices, and similar architectural features;

Subsection (b) requires that all character-defining architectural features be retained, with repairs if necessary, unless the feature in question is extensively damaged or missing:

> > (b) preservation shall require retention of all character-defining features (including damaged or deteriorated features that could reasonably be repaired and thus preserved), except that an extensively deteriorated, damaged, or entirely missing character-defining feature may be replaced using either traditional or substitute materials;

The proposed language is modeled closely on the Secretary of the Interior's *Standards for the Treatment of Historic Properties*. *See* "Standards for Preservation and Guidelines for Preserving Historic Buildings," *id.* at 18-20.[7]

Subsection (c) expressly prohibits the type of wholesale demolition and nominal "reconstruction" allowed by LeGrant for 1001 H St. NE:

> > (c) except as provided above, preservation shall require *in situ* retention of the façade, and not demolition followed by reconstruction (even if proposed to use the original materials); and

Finally, subsection (d) addresses the Zoning Administrator's many conflicting views on which portions of a structure, especially on a corner lot, qualify as a "façade" subject to the foregoing requirements:

---

[7] The Standards may be found online at https://www.nps.gov/tps/standards/four-treatments/treatment-guidelines.pdf.

(d) façade preservation shall apply equally to elevations fronting on H Street and any side street intersecting with (or alley perpendicular to) H Street, but not to any party wall or face-on-line wall abutting an interior lot.

In particular, this subsection bars the practice of treating party walls and the like as a "façade" and thereby diluting the proportion of actual historic, street-visible façades subject to protection.

DESIGN REQUIREMENTS

The H St. zoning regulations also impose several design requirements on new construction. Like the façade-preservation elements, these design requirements were meant to shape the public realm and new development

> in ways that respect the community's character, protect neighborhood livability and contribute to the making of active streets and public spaces. New development should be urban in character and use, bringing life to the street, complementing historic buildings and reinforcing a "sense of place" for the corridor. Through the use of design guidelines and preservation incentives, the community can ensure that new investment is of the highest quality.[8]

Perversely, however, Zoning Administrator LeGrant has taken the position that numerous of these requirements—including the minimum streetwall percentage of clear glass; the minimum transparency of security grilles; the minimum sign clearance above the sidewalk; and the location and projection rules for façade panel signs—**do not** apply to the side elevations of corner lots. *See* 528 H St. Letter, Tab F at 2.[9]

We do not believe this reading comports with the terms of the regulations or with the esthetic and safety interests they seek to advance. Opaque security shutters are no less unattractive on a side street approaching H St. than on H St. itself. Projecting signs on side streets are just as dangerous if installed too low. And façade panel signs blocking doors or windows on a side street are just as much an eyesore as on H St.

Accordingly, we recommend adoption of a new section 909.2 making explicit that at least three design requirements (for security grilles, projecting signs, and façade panel signs) apply to the sides of corner properties:

> Sections 909.1(e), (j), and (k) shall on corner lots apply equally to frontage on H Street and any side street.

---

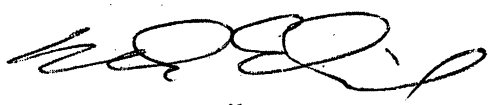
[8] *H Street NE Strategic Development Plan* at 32.

[9] The 528 H St. Letter concludes that "the design requirements of Section 1324.8 through 1324.15 only apply along the H St. façade." Tab F at 2. These provisions correspond to the 2016 regulations in subtitle H, sections 909.1(e) through (k).

CONCLUSION

For all the reasons stated above, ANC 6C requests that the Commission set this matter for public hearing and adopt the proposed amendments after notice and comment. ANC 6A, the only other ANC whose boundaries encompass the H St. corridor, has voted to support this application in principle based on its review of the amendment text. (A copy of ANC 6A's letter of support is attached at Tab H.)

Respectfully submitted,



Mark Eckenwiler
Commissioner, ANC 6C04
(as authorized representative
for ANC 6C)

September 6, 2016

ATTACHMENTS

A. Text of Proposed Amendments

B. Letter from R. Tony Marshall of RAM Contracting Services, LLC to Matt LeGrant, June 14, 2013 (Ben's Chili Bowl Letter)

C. DCRA Reviewer Notes for Permit B1301584

D. LeGrant Email Exchange with Subject Line "Ben's Chili Bowl – Preservation Letter 6-14-2013"

E. Zoning Determination Letter from Matt LeGrant to Dario Davies concerning 646-654 H St. NE, April 23, 2014 (654 H St. Letter)

F. Zoning Determination Letter from Matt LeGrant to David Avitabile concerning 526-528 H St. NE (528 H St. Letter)

G. ANC 6A 2013 Email Exchange with Matt LeGrant

H. Letter of Support from ANC 6A

Government of the District of Columbia

Advisory Neighborhood Commission 6C

September 26, 2017

The Hon. Phil Mendelson
Chairman
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue NW
Suite 504
Washington, D.C. 20004

Re: Need for legislation to address DCRA mishandling of after-hours construction permits

Dear Chairman Mendelson:

We write[1] to make you aware of an ongoing problem with DCRA's policies and practices for issuing after-hours construction permits in or near residential neighborhoods. As explained below, ANC 6C believes the Council should adopt legislation to clarify and narrow the circumstances under which DCRA may authorize late-night construction in such residential areas.

As you probably know, DCRA may authorize after-hours construction (*i.e.*, between 7 p.m. and 7 a.m. Monday-Saturday and all day Sunday) in or near a residential zone only in circumstances where "not issuing such permit would pose a threat to public safety, health and welfare." 12A DCMR § 105.1.3. Unfortunately, as we noted in written testimony earlier this year,[2] DCRA has a longstanding practice of issuing after-hours permits where the required exigency does not exist.

Recently, DCRA issued two after-hours permits affecting ANC 6C that further underscore the agency's maladministration of the regulations:

- **901 H St. NE**: On August 16, DCRA issued permit AH1701175 authorizing construction beginning at 5 a.m. This large worksite extends all the way to 8th St. NE

[1] On September 19, 2017, at a duly noticed, regularly scheduled monthly meeting of ANC 6C, with a quorum of 4 out of 6 commissioners and the public present, the Commission voted 4-0 to adopt the positions set forth in this letter.

[2] Written testimony of Advisory Neighborhood Commission 6C before the Committee of the Whole on "The Department of Consumer and Regulatory Affairs: What Issues Should the Committee Pursue?" (Feb. 21, 2017).

and thus abuts ANC 6C at its eastern border; it is directly across the street from rowhouses in ANC 6C's residential zone.

When ANC 6C05 Commissioner Christopher Miller learned of this permit and inquired, it became clear that the only justification was the contractor's desire to start work earlier in the day. There was no conceivable "threat to public safety, health and welfare" from requiring the applicant to limit its work to the 12 standard permit hours (and thus to avoid disrupting the sleep of nearby ANC 6C residents). Only after Comm. Miller objected was the permit withdrawn.

- **215 G St. NE**: On July 31, DCRA issued permit AH1701119 authorizing round-the-clock construction (24 hours/day, 7 days/week), along with a blanket exemption from all noise restrictions. This location sits entirely within a residential zone and is surrounded on three sides by rowhouse dwellings.

  On the previous day, a Sunday, ANC 6C04 Commissioner Mark Eckenwiler repeatedly observed illegal work being performed at the site, resulting in a case-and-desist order from MPD officers. That same day, the DGS Director stated in writing to Comm. Eckenwiler that "[t]he remaining work will be contained inside the building .... All outside work [has been] completed. Since the work is contained inside, I see no significant noise issues that would occur with the community during this time."

  Despite this obvious lack of need, DCRA nevertheless issued its plenary after-hours permit at 10:28 a.m. the following morning without even consulting with the commissioner. Only after the commissioner filed two separate administrative appeals did DCRA relent and issue a narrowed permit (AH1701145) with more stringent conditions.

We recognize that there will be occasions when overnight construction, including loud and potentially disruptive work, may be unavoidable.[3] However, DCRA's cavalier application of the after-hours permit regulation over many years convinces us that legislation is needed.

We therefore urge the Council, in the strongest terms possible, to develop and pass legislation to narrow and clarify the standard in section 105.1.3 for after-hours permit issuance. The health and well-being of District residents—not to mention their right to quiet enjoyment of their homes—demands nothing less. Naturally, we stand ready to assist the Council in crafting legislative text to meet this need.

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[3] For instance, we have recently seen after-hours permits for large projects on H St. NE where daytime activity would materially interfere with, and potentially endanger, streetcar operations. Upon receiving satisfactory explanations for the need, members of the Commission have worked cooperatively with DCRA and permit applicants to arrive at compromise terms enabling the needed work while protecting the interests of local residents.

Thank you for giving great weight to the views of ANC 6C.

Sincerely,

Karen J. Wirt

Karen Wirt
Chair, ANC 6C

Cc: Councilmember Charles Allen
DCRA Director Melinda Bolling

Written Testimony of Advisory Neighborhood Commission 6C[1]
Before the Committee of the Whole
on
B22-669, Department of Buildings Establishment Act of 2018

Public Hearing
April 19, 2018

Presented by Mark Eckenwiler, Commissioner, ANC 6C04

Mr. Chairman and Members of the Committee,

ANC 6C supports B22-669, Department of Buildings Establishment Act of 2018. As detailed below, we believe the legislation would serve the public interest by addressing several longstanding problems within the Department of Consumer and Regulatory Affairs (DCRA). At the same time, we respectfully offer several concrete suggestions for ways to improve the bill further.

Summary of the Legislation

The bill would split DCRA into two agencies:

- A new Department of Buildings (DOB) responsible for construction, zoning, and housing code administration (permitting, code maintenance/revision) and enforcement.
- The Department of Licensing and Consumer Protections, which would retain DCRA's remaining duties.

DOB, led by a Director, would have the following components:

- Office of the Director (Human Resources, General Counsel, Communications, Information Technology)
- Administrative Services (customer service/complaint resolution; fleet management; contracting/procurement)
- Office of Construction & Building Standards, led by the **Chief Building Official (CBO)**, with the following subcomponents:
    - Permitting operations
    - Construction compliance (code revision)
    - Inspections
    - Green Building Division

[1] ANC 6C authorized this testimony at its duly noticed, regularly scheduled monthly meeting on April 11, 2018, with a quorum of 6 out of 6 commissioners and the public present, by a vote of 6-0.

    - Office of the Surveyor
    - Third-party inspections
    - Zoning Administration
- Office of Residential Inspection (vacant/blighted; rental housing inspections; housing rehabilitation, including abatement of violations)
- Office of Strategic Code Enforcement led by **Strategic Enforcement Administrator (SEA)**
    - Code enforcement division (coordinate and monitor enforcement of cited violations; issue Notices of Infraction (NOIs))
    - Civil Infractions and Fine Assessment Division (handle OAH hearings; collect fines & impose liens)

Notably, the CBO and SEA would require Council confirmation; would have fixed five-year terms; and would be removable only for cause to make them more insulated from political pressure. A CBO nominee would also be required to have certain minimum qualifications.

Section 107 requires the City Administrator to prepare and submit a detailed transition plan with timeline.

Sections 201 and 202 require the SEA, once DOB is created, to develop a yearly enforcement plan and submit a detailed annual enforcement report.

Analysis and Main Recommendations

On balance, this bill marks an important effort to address certain structural problems within DCRA. The current agency is so large, and its portfolio so varied, that it is unclear whether any Director is capable of running it effectively. The current Director certainly has not done so.

Creating statutory protections for key officials (and in the case of the CBO, minimum qualifications) is a positive step toward more responsible governance. That said, the legislation would benefit from several improvements:

- **CBO qualifications:** The statement of the CBO's qualifications (lines 110-113) should include a preference for candidates with a degree in architecture or structural engineering.
- **Scope of the CBO's authority**: The bill's list of the CBO's regulatory authority includes only a small number of the subtitles in Title 12, DCMR. (For example, it omits the Electrical Code, the Plumbing Code, the Mechanical Code, and the Fire Code, among other provisions.) The Council should expand this authority to cover all of the disciplines in Title 12.

- Relatedly, we do not believe that there needs to be a Green Building Division under the CBO separate from the permitting, compliance, and inspection divisions. This is not to diminish the importance of the Green Building requirements; clearly, these rules serve an increasingly important function in the face of climate change. However, we are concerned that a separate Green Building Division may result in duplication of effort, organizational inefficiency, and potential conflict with other components.

Conversely, the CBO's authority should **not** encompass the zoning regulations. Unlike with Title 12, the issues involved in administering zoning regulations cover other subjects (such as usage) extending well beyond the physical characteristics of structures, and thus require their own specialized set of skills and experience.

- **Accordingly, we recommend that the Zoning Administrator (ZA) have authority over the subject matter described in lines 212-220.** The ZA, like the CBO, should be Council-confirmed; term-appointed; removable only for cause; and subject to certain minimum qualifications. In addition to senior-level work experience, those qualifications should express a preference for candidates who hold a graduate degree in law, architecture, or land use/urban planning. The Office of the ZA would not be located within the Office of Construction and Building Standards led by the CBO, as proposed at lines 212-220, but would instead be a separate peer component.

- **Confirmation of term-appointed officials**: The CBO, like the SEA and the ZA proposed above, should be confirmed anew. We oppose the proposal to retain the incumbent CBO without Council confirmation.

- **Conflicting authorities among officials**: While we support the concept of having the SEA monitor the work of the CBO's inspections and enforcement staff—almost as a quasi-Inspector General—we are concerned that the bill does not clearly demarcate the boundaries between their duties. For example, line 145 tasks the SEA with "general administration of the Department's enforcement efforts," but tasks the ZA's office (under the CBO in the bill) with "enforc[ing] zoning regulations."

  Clarity around DCRA's current processes for inspection; enforcement; fine adjudication, reduction, and collection; and abatement of illegal conditions would provide useful guidance on how to draw these dividing lines.

  - Relatedly, the legislation does not always make clear that enforcement efforts must not stop at fines for improper work, but must also pursue removal/abatement of any improper use or structure. (We have seen multiple cases in which DCRA a) assessed a fine for an addition constructed with no permit but b) failed to follow up to require the

removal of the illegal structure.) For example, line 130 refers only to the collection/enforcement of fines; likewise, lines 236-247 discuss both fines and "compel[ling] compliance through judicial orders," but overlooks the fact that in current practice DCRA—and not OAG—is responsible for enforcing abatement orders before OAH.

- **Public access to Department records:** As the Council is well aware, DCRA has for years failed to comply with its obligations under D.C. Official Code § 2-536(a)(8A) to make building permit application files available to the public at no cost on a public website. However, lines 163-167 of the bill (describing the duties of the IT unit within the Office of the Director) make no mention of such services. Enabling and supporting public access to all relevant records must be made an explicit part of this office's responsibilities.

- **Reporting on fines:** The fine-collection data in the required annual report (lines 310 *et seq.*) should also indicate whether a citation was eligible, as a second or subsequent violation, for an escalated fine. (*See, e.g.*, the schedule of escalating fines set forth at 16 DCMR § 3201.1.) Likewise, the report should provide a reason in any case where the maximum available fine was not imposed or collected.

- **DOB charter:** The Department of Buildings charter (lines 70-74) should expressly include the zoning regulations among the regulations and codes to be enforced and administered (lines 73-74).

Miscellaneous Corrections and Questions

Lines 41-45: "proscribe" should be "prescribe".

Line 127: The reference to the CIO should probably cross-reference lines 221 *et seq.*, which describe the CIO's duties.

Line 161: This should probably read "the Office of General Counsel" instead.

Line 185: It is unclear to us why the component responsible for writing and revising code provisions is called "Compliance" and not "Standards."

Line 190: The Building Inspection Division is assigned responsibility to "[i]nspect commercial buildings," but not to inspect residential or other types of buildings. This should be expanded, given that the duties of the separate Office of Residential Inspection (lines 211 *et seq.*) do not encompass inspections for construction or zoning code violations.

Lines 213-214: Because the Zoning Administrator reviews all significant construction permit applications, the citation should be to all of Title 11, DCMR and not only to subtitle X.

Lines 218-220: "Refers developers" should be "Refer applicants". Strike "and the Zoning Board," as BZA handles all non-PUD variances and special exceptions. Also, such relief is from the zoning regulations themselves and not (as implied by the current language) from the ZA's rulings. (If the intent is to include appeals from an adverse ZA ruling—which would also be handled by BZA—then clarification is needed.)

Line 221: The section numbering skips from 106(a)(3) to 106(a)(5).

Line 223: We suggest "inspect" in lieu of "investigate."

* * *

We thank you for the opportunity to provide testimony and welcome any followup questions the Committee may have.

DCRA ENABLES DESTRUCTION OF AFFORDABLE HOUSING STOCK AND DISPLACEMENT OF LOW-INCOME RESIDENTS THROUGH PURPOSEFUL INACTION

FEBRUARY 6, 2019

Good Morning. My name is Renee Bowser. I am Chair of Advisory Neighborhood Commission 4D. I am testifying in my individual capacity as Single Member District (SMD) 4D02 Commissioner.

SMD 4D02, a principally row house district, has 6 older apartment buildings that appear subject to rent control because their building permits were issued before December 31, 1975. My 4 blocks of buildings with 4 or fewer rentals are exempt from rent control P. Tatian, A. Williams, A Rent Control Report for the District of Columbia, The Urban Institute, June, 2011 at 7-9.

In 2011, the Urban Institute reported that DC had nearly 80,000 units potentially subject to rent control, a significant portion of DC's affordable housing stock. A Rent Control Report for the District of Columbia at 13. At that time, Ward 4 had approximately 7000 units subject to rent control. Id. These are the buildings and units affordable to low income residents, including extremely low income and very low income, as the DC Code § 42-2802(b-1) defines these terms. (The code defines households with income up to 30% of Area Median Income (AMI) as extremely low income and those with income between 31%- 50% of AMI as very low income for purposes of the Housing Production Trust Fund.)

Over the years, DCRA has consistently failed to enforce the housing codes at older apartments in Ward 4. This inaction helps slumlords push out low income residents from the Ward's affordable housing stock. Mounting violations which go unabated cause drastic deterioration in tenants' living conditions. As conditions deteriorate, more tenants vacate their buildings in search of better living conditions in DC's shrinking affordable rental stock, leaving many buildings only partially occupied. After slumlords clear their buildings, they renovate them and charge substantially higher rents than their ousted tenants can afford. The result is permanent displacement of low-income tenants: gentrification on steroids! These conditions fester because DCRA refuses to treat the slumlords as the serial law breakers they are, always giving them more time to correct the violations that have gone unabated for years.

DCRA has continued its years' long refusal to enforce the housing codes at rent-controlled buildings in Ward 4 and ANC 4D. A 2016 City Paper investigation of DCRA's records showed the agency's willful refusal to enforce housing codes at 1451 Sheridan Street, NW owned by Saifur Khan operating as 16th St. Heights Noah LLC. A. Kowalski, Q. Myers, At What Price, Washington City Paper, April 29, 2016 at 5. In the 4 years from 2012 – 2016, DCRA inspected individual apartments at 1451 Sheridan Street 33 times. Id. But DCRA did not force the owner to comply with the law and correct the violations. During the same period, DCRA inspected apartments 30 times at 1405 Somerset Place,

NW, another building Saifur Khan owns in Ward 4. After longstanding inaction by DCRA, a fed-up resident took the owner to court in order to get most of the violations in her apartment fixed. Id. at 7. See also, Baskin, After a Fire and a Flood, Brightwood Park Tenants Navigate Their New Reality, Washington City Paper, May 3, 2018 at 2 (ANC 4D market rate building at 5320 8th Street, NW where DCRA issued 16 notices of violation between 2014-2016, issuing 100 of pages of inspection documents); Delgadillo, Facing Decrepit Conditions, Another D.C. Apartment Building Goes on Rent Strike, Oct.15, 2018 at 2 (tenants go on rent strike in protest of mice, roaches, waterlogged ceilings, and mold).

I saw up close DCRA's willful failure to force slumlord Rufus Stancil and his slum successor Vivienne Awasum to fix gross housing code violations at the Parkview Apartments in my SMD. My March 15, 2016 email to CM Todd and his staff, DCRA's Donise Peace, OTA's Delores Anderson, and EOM representative Benab detailed the unsafe and unsanitary conditions at the Parkview, quoting a tenant who wrote to me about the egregious conditions in which she and her family are forced to live. (Commissioner Bowser Email to CM Todd titled Immediate Action Needed to Fix Massive Housing Code Violations at Parkview Apartments, 220 Hamilton Street, NW, March 15, 2016-Copy attached.) In early April, 2016, DCRA issued a 30-page Notice of Violation of the massive violations existing at the Parkview. Notices of Violation dated April 4, 7, and 12 issued by Inspector Michael Lampo. On April 12, 2016, I emailed the Office of the Attorney General, attaching emails to various DC agencies dating back to 2013 and explaining that Parkview tenants provided Chief Tenant Advocate Johanna Shreve more detail of deplorable living conditions and asking for OAG action. ANC 4D02 Commissioner Emails Regarding Housing Code Violations at Parkview Apartments, 220 Hamilton St., NW to Rashee Kumar, April 12, 2016.

After Vivienne Awasum purchased the Parkview in 2017 and continued Stancil's slumlord conditions, the tenants decided to sue for better conditions and prevent displacement. There were additional DCRA inspections; but little or no compliance. Finally, In December, 2018, nearly 3 years after the 2016 inspections, OAG asked Superior Court for a receiver to oversee building repairs to abate the housing code violations.

Last fall, slumlord Awasum brazenly applied to the Department of Housing and Community Development (DHCD) for taxpayer funding for "substantial renovation" of the Parkview after refusing to fix glaring housing code violations. At the same time, according to the tenant association, the slumlord refused to negotiate with the tenants or offer them any long-term security after the building is renovated.

These examples show that DCRA's refusal to enforce the housing codes against these slumlords is knowing, purposeful, and systemic. These agencies are doing the developers' bidding if they allow the slumlords to undertake "substantial renovation" at taxpayer expense and oust low income tenants who will no longer be able to afford to live in the apartments. DCRA must be prohibited from assisting slumlords in systematically eliminating rent-controlled housing.

I applaud the Council for passage of the Department of Consumer and Regulatory Affairs Omnibus Amendment Act of 2018 because it requires notification to the Office of the Attorney General of Class 1, 2, 3, or 4 infractions that have not been abated within 6 months; limits DCRA's enforcement discretion regarding repeat or unabated housing code violations; and allows a property owner with 30 days to abate a housing code violation and limits DCRA discretion to extend the abatement period to instances where the property owner has made reasonable and good faith efforts to abate.

To prevent further destruction of rent-controlled and other moderately priced rental housing, the Council must deny basic business licenses and building permits to these rental property owners who severely neglect their properties. In addition, the Council should prohibit DHCD and other agencies from awarding any subsidy to property owners who have refused to make good faith efforts to bring their properties into compliance with the housing codes over long periods. No taxpayer subsidies should be granted without placing substantial restrictions on displacing existing tenants who endured years of harm at the hands of slumlords. To this end, DC Council should require any agency with authority to grant taxpayer subsidies to rental property owner to check a registry to learn whether the property owner is in violation of DC's housing codes. Furthermore, DCRA must be required to maintain a registry of complaints about housing conditions at rental properties for at least 5 years so that the agency can discern any patterns of refusal to abate housing code violations.

Dated: February 6, 2019

Renee L. Bowser
ANC 4D02 Commissioner
Chair, ANC 4D
Renee.Bowser@anc.dc.gov
(240) 801-5830

Attachments

ANC 4D02 Commissioner Emails Regarding Housing Code Violations at Parkview Apartments, 220 Hamilton St., NW

Bowser, Renée L. (SMD 4D02) <4D02@anc.dc.gov>

Tue 4/12/2016 6:12 PM

To:Kumar, Rashee (OAG) <rashee.kumar@dc.gov>;

Cc:Aniton, Michael (OSSE) <michael.aniton@dc.gov>;

Importance: High

2 attachments

4D02 Commissioner Emails re Housing Code Violation at Parkview Apts. 220 Hamilton St. NW 2013-1016 - Part A.pdf; 4D02 Commissioner Emails re Housing Code Violation at Parkview Apts. 220 Hamilton St. NW 2013-1016 - Part B.pdf;

Hello Ms. Kumar:

In a follow up to my conversation with Mr. Aniton a couple weeks ago regarding massive housing code violations and deplorable living conditions at the Parkview Apartments, 220 Hamilton Street, NW in my single member district, I am attaching emails which I've sent to various DC agencies about the Parkview Apartments since 2013.

As I explained to Mr. Aniton, the lack of action by DCRA and other agencies to force owner Rufus Stancil to comply with DC law and housing code violations is unconscionable. Further it appears that receivership proceedings initiated by former Attorney General Peter Nickles some years ago were never implemented.

Last week, Chief Tenant Advocate Johanna Shreve met with at least ten tenants at my quarterly SMD meeting. We learned even more detail of the deplorable conditions in which tenants are being forced to live. Additionally, last week, DCRA's proactive division inspected the property.

Please inform me of the next steps the Office of Attorney General will take \to remedy these long existing unlawful conditions and when those steps will be taken.

Thank you,
Renee L. Bowser
ANC 4D02 Commissioner
ANC 4D Vice Chair
202-466-1593 w

Immediate Action Needed to Fix Massive Housing Code Violations at Parkview Apartments, 220 Hamilton St., NW

Bowser, Renée L. (SMD 4D02) <4D02@anc.dc.gov>

Tue 3/15/2016 10:47 AM

To:Todd, Brandon (COUNCIL) <BTodd@DCCOUNCIL.US>; Peace, Donise (DCRA) <donise.peace@dc.gov>; Duffie, Celeste (DPW) <Celeste.Duffie@dc.gov>; Anderson, Delores (OTA) <delores.anderson@dc.gov>;

Cc:snewman@dccouncil.us <snewman@dccouncil.us>; jcarnes@dccouncil.us <jcarnes@dccouncil.us>; Benab, Jasmin (EOM) <Jasmin.Benab@dc.gov>;

Importance: High

2 attachments

20160314_172859.jpg; DCRA Performance Oversight Testimony 2.29.2016.docx;

On March 14, 2016, I received the following description of the living conditions at the Parkview Apartments, 220 Hamilton Street, NW about which I have complained for years. The conditions are far worse than I knew and catastrophic for the families who live there.

"Dear, ms. Bowser I lived in 220 Hamilton st nw apt 10. I would like to let you know that the building in which I live in has many flaws such as; mice, roaches, bedbugs, and many of the wallws are cracked and falling apart. Also under the sink there are many holes. I called the company many times, since last year , but no one came to fix any of the problems. I called dcra but still, nothing. I am worried because I have children and I am concern for their safety, and health. I hope that some company or agency can help solve this problem.thank you."

I have attached a picture the tenant sent me of her apartment.

It's time that DCRA and the other DC government agencies force owner Rufus Stancil to clean up his building so that residents can have a sanitary and safe place to live.

As my testimony to CM Orange's Committee regarding DCRA unacceptable performance states, DCRA and the Office of the Attorney General should petition for receivership of this building so that the massive housing code violations can be properly and completely fixed.

Please let me know what immediate action DCRA, DPW, OTA, Councilmember Todd, and other agencies that have responsibility for the conditions at the Parkview will take to remedy these deplorable conditions.

Thank you,

Renee L. Bowser
ANC 4D02 Commissioner
ANC 4D Vice Chair
202-466-1593 w

Commissioner Chuck Elkins (ANC3D01)
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Oral Testimony before the Committee of the Whole regarding the Department of Consumer and Regulatory Affairs
February 6, 2019

My name is Chuck Elkins and I am Chair of ANC3D, but today I am testifying only for my Single Member District.

I want to start with DCRA's motto: Safe and Simple. Here's the way that this motto has been implemented:

DCRA's Motto: As Implemented

Safe and SIMPLE

"Safe" is said with a whisper and "Simple" has been shouted from the roof tops. We need to turn this Department around and balance out the playing field.

DCRA is a crucial component of DC's economic Development. If it performs well, we will have newer and safer buildings in this city and the economy will thrive as a result. But this Department has not been given the resources and the legal help it needs to keep up with the economic development of the city.

How do I know this? By looking at how they allocate their resources. They still don't have enough plan reviewers to process quickly the huge number of permits that come in the door each day and they have so few inspectors that they have to rely on citizens' complaints as their principle way of finding violators. If the Police Department had to run their enforcement program this way without having officers out patrolling the neighborhoods, we would have a lot more crime in this city than we do.

There is a lot of money to be made in construction business in this city, and even more money if you cheat. Cheaters rarely get caught and when they do they usually get only a tap on the wrist. If that is the only kind of enforcement program DC can afford, why spend all that money making sure that the permits contain all of those code requirements? Why not just rubber stamp them and shove them out the door?

DCRA has a new Director. He is firmly set on reforming what I have described above, and if you want him to succeed, then there are some things you can do to help him turn this Department around. Whether you reorganize the Department or not, I believe you still need to do the following things.

Expand DCRA's eyes and ears in the field using ANC Commissioners. ANC Commissioners are an untapped source of local knowledge. We know the shady developers and we know the unique characteristics of some of these local properties that need to be considered in any permit.

So authorize ANC Commissioners to view and comment on pending permits. Because of their local knowledge, they will be able to spot problems that the plan reviewers, sitting in their offices downtown, won't see. Why are the ANC's the only major DC city institution that have to chase down problems AFTER the permit is issued rather than being allowed to point them out during the permit process and thereby PREVENT problems in the first place.

In the same vein, authorize ANC Commissioners to file citizen affidavits which can be valid in administrative hearings. This will expand DCRA's inspection force, but also put the fear of God in the hearts of shady contractors. They know that DCRA can't be present most of the time, but they also know that neighbors are watching what they are doing, and if they cut obvious corners such as building in violation of the front-yard setback or working despite a stop work order, these neighbors could turn them in to their local ANC Commissioner. This step alone would engender a lot of what we can call "Voluntary Compliance" on the part of these shady contractors.

Next, please give DCRA the authority to issue—and withhold—residential Certificates of Occupancy. DCRA , including the Zoning Administrator, is a paper tiger when it comes to trying to get residential builders to bring a house into compliance with the regulations. A residential Certificate of Occupancy would give DCRA a lot more clout.

Finally, give DCRA the financial resources to match the increased volume of work that the expanding economy of DC is bringing to them. How many resources? I think a benchmarking study is the way to find out. When asked by stakeholders how DCRA ranks with similar agencies across the country in terms of its performance, senior DCRA staff have said, "But DC is

different." But is it really? What if you learned that, hypothetically, Chicago or Denver have twice as many inspectors per 1,000 permits issued as DCRA does? Wouldn't that tell us that either DCRA is terribly efficient and effective in its enforcement program or perhaps that it is not putting the right number of inspectors in the field? I don't have all those figures, of course, because I'm only an ANC Commissioner, but I doubt that the Council has them either. What little I have heard about such benchmark figures makes me believe that DCRA has been on a starvation diet.

So in summary, there's a new Director at DCRA and, in my view, he is saying a lot of the right things about how he is going to reform the Department. Is the Council going to sit back and take the risk that he might fail, or instead are you going to make sure he has the financial resources and changes to the laws that greatly increase the chances of his success?

The motto of DCRA needs to be brought back into balance so that the building economy in DC is both SAFE and SIMPLE.

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Testimony before the Committee of the Whole regarding the Department of Consumer and Regulatory Affairs
February 6, 2019

Thank you for the opportunity to submit some ideas about ways to improve the performance of DCRA. I am testifying in my individual capacity as an ANC Commissioner, and not on behalf of ANC3D as a whole.

My focus today is on DCRA's compliance and enforcement program which is totally inadequate and an embarrassment to this City. This important component of DCRA's mission starved for resources. It depends heavily on citizens' tips to determine its targets for enforcement, and as a result builders know they have very little chance of getting caught if they cheat. Even when they are caught, a slap on the wrist is the usual punishment and their outrageous behavior on past projects has no effect on their ability to get new permits in the future. If the DC police operated under such a strategy, we would all be demanding reform.

What good does it do for DCRA to issue detailed permits based on a building code that is as thick as an old Sears catalog if these provisions are not enforced? Following these requirements to the letter costs builders a lot of money and some obviously have concluded , why spend it if you know you won't be caught? Enforcement at DCRA has be consigned to a closet while the Department rolls out shiny new programs that allow the permits to be issued faster and faster. There's nothing wrong with faster permitting, but it needs to be accompanied by a more nimble enforcement program—which it isn't.

As you know, DCRA's motto is "Safe and Simple". It sound great until you look closely to see how DCRA has implemented it. Here's my interpretation:

DCRA's Motto: As Implemented

Safe and SIMPLE

DCRA is definitely listening to those stakeholders who want permitting to be SIMPLE. Those who want buildings to be SAFE are not being effectively heard and as a result the Department is a "paper tiger" when it comes to compliance and enforcement.

How do we restore the balance between making permitting SIMPLE and making us all SAFE?

It is not that complicated. A reorganization of the Department may be a good idea, but reorganizations are highly disruptive and the just-introduced reorganization bill sets some long timelines for the hoped-for improvements. IN THE MEANTIME, there are many things the Council can do to restore the balance and make our buildings SAFE. I suggest nine of them in this testimony.

The details are in the Attachments to this testimony, but here's a summary:

1. **Include ANC Commissioners as Reviewers of Draft Permits (Attachment 1)**
Errors do occur in granting permits and they can be costly and hard to remediate. Why are ANC Commissioners the one major group in the DC Government that is excluded from permitting process? ANC Commissioners are the eyes and ears of the District Government at the neighborhood level and can play a key role to prevent errors in issued permits. ANC Commissioners should no longer be shut out of the permitting process. If we can review public spaced applications, we can review building permits.

2. Authorize ANC Commissioners to Submit Legally Sufficient Evidence of Violations of Building Code, Zoning, and Stop Work Orders (Attachment 2)
Builders in the District today know that it is unlikely that they will be caught and penalized for violations of the building code, zoning regulations, and Stop Work orders. DCRA simply doesn't have enough inspectors to be out looking for violations. What kind of crime enforcement would we have if police officers weren't patrolling our neighborhoods. DCRA needs more eyes and ears, and ANC Commissioners, tipped off by their constituents, can document violations and report them using a citizen affidavit. Such an affidavit, if authorized by the Council, could obviate the need for an inspector to observe the violation and be presented as evidence in an administrative hearing. ANC Commissioners are protected by statute from liability for any mistakes they might inadvertently make.

3. Require a Residential Certificate of Occupancy (Attachment 3)
Currently, the Zoning Administrator and DCRA enforcers have little or no leverage to bring a recalcitrant residential builder into compliance when he violates the building code or zoning regulations. The Zoning Administrator can request the builder to submit his plans to come into compliance, but if the builder fails to do so, the Zoning Administrator has little or no leverage to make him do so. The situation is quite different with commercial properties because DCRA can withhold the certificate of occupancy and this gives the Department very strong leverage over the builder. We need a residential certificate of occupancy requirement in those cases of construction that is so major that the occupants need to move out of the house before the construction begins.

4. Allow DCRA to pierce the Corporate Veil of Limited Liability Corporations and thereby Sanction Repeated Violators of City Laws (Attachment 4)

It is well known that there are some "bad apples" among those who design, construct, and operate buildings in DC. Yet, nothing seems to happen to these people, apparently because these individuals can form a separate LLC for each project and thereby hide their identify and prevent DCRA from imposing sanctions because of multiple violations across properties. In addition, it is not clear that DCRA has the sanction authority to deal with such multiple violations. The Council can fix these problems.

5. Benchmark DCRA against Similar Agencies Across the Country (Attachment 5)

DCRA states proudly that it does 50,000 inspections a year. Is this a high (good) number? Compared to what? Without any comparisons to other cities, adjusted for similar population, number of permits issued a year, etc., how does the Council or the public know whether DCRA is doing a good job or a terrible job? The solution is for the Council to direct the DC Auditor to do a benchmarking study of other "DCRA's" across the country to assess DCRA's performance in both giving permits and in ensuring compliance with them in order to allow the Council to set realistic goals for the Department, provide sufficient funding to achieve them, and conduct active oversight.

6. Place all of DCRA's permit drawings and applications on line (Attachment 6)

The builders have the drawings; DCRA has the drawings, but the public does not. Some years ago I understand that the Council gave DCRA funds to put all of these drawings and applications on line. Instead they have worked to make tracking of permit applications on line by builders easy, but have not allowed citizens and ANC Commissioners to see quickly what was permitted and then observe whether the builder is conforming to the drawings. Yes, one can ask DCRA for them, but that takes days, and sometimes one must submit a FOIA request. We need transparency for the public if there is going to be accountability for both the builders and DCRA.

7. Establish an Ombudsman for DCRA to help constituents (Attachment 7)

It is very hard to get DCRA to do what they are required to do, including enforce the regulations. Who does one call, what information is needed, and what if DCRA is not responsive? To constituents, DCRA is one big "black hole." The solution is to establish an Ombudsman function either within DCRA or outside it whose job it would be to arm the constituent with the knowledge of what is needed to convince DCRA to take a (different) action and how to push the issue forward through the Department. In the most egregious cases, the Ombudsman would actively help the constitute push the matter forward with DCRA and, where the Ombudsman runs into a brick wall, to elevate the matter within the Department. The Ombudsman should report once a year to the Council on what he has done, what he is finding out about how the Department REALLY functions and what suggestions he might have for improvements.

8. Provide information to ANC Commissioners and Constituents about Compliance and Enforcement on the DCRA webpage (Attachment 8)

If a constituent or an ANC Commissioner wants to know about how to get a permit, the DCRA website is just full of information for them. However, if the same constituent and ANC Commissioner wants to know how to get builders or owners within his neighborhood to comply with the building and zoning regulations, they are out of luck. In the Attachment that I previously provided to the Department, I lay out topics that a page within the DCRA website devoted to Compliance could contain. This is a simple way for DCRA to better informed constituents who can then serve as the eyes and ears on the street that DCRA now so desperately lacks.

9. Increase the DCRA's budget for compliance and enforcement (Attachment 9)
DCRA is spending most of its new resources on the shiny new programs for making permits simple and faster to get. This imbalance needs to be corrected. Compliance and enforcement needs significantly increased earmarked resources which will allow the Department to implement a much more effective strategy to incentivize voluntary compliance and then sanction those who choose to cheat instead. Hopefully the Council will not adopt an attitude that it won't devote more resources to compliance until the Department improves it performance in this area. That would be self-defeating.

Thank you for your consideration of these ideas for improving DCRA's performance and the satisfaction of its stakeholders who are not seeking permits but rather who want them enforced. The Council needs to help these stakeholders be heard!

Attachment 1

Include ANC Commissioners as Reviewers of Draft Permits

The Problem:

Once a building permit is issued, a builder has an expectation that he can rely on that permit and begin his operations. If an error is found later, the builder might sustain serious financial damage if he has to correct the error. Yet, the error may present substantial public health risks or undermine neighborhood-specific requirements. For this reason, preventing errors in in the issuance of permits should receive a high priority within DCRA. However, ANC Commissioners are excluded from review of permits, while other DC agencies/resources are not.

Proposed Solution:

Direct that ANC Commissioners be invited to participate in the review of any plans in their SMD going through building permit review, just as they are currently invited to review Public Space Applications. ANC Commissioners should be notified of such plans just as they are now informed of Public Space Applications in their SMD and could participate, or not, as they saw fit depending on the circumstances of a particular project and its importance to the neighborhood.

Rationale:

Why are ANC Commissioners the one major group in DC Government which is excluded from permitting process? ANC Commissioners are the eyes and ears of the District Government at the neighborhood level and can play a key role to prevent errors in issued permits. In contrast to DCRA reviewers, Commissioners are often familiar with the property in question, and may know the builder from previous projects and ways in which they may cut corners. As an example, a builder might list a wall as "existing" but in fact it is to be a new wall, subject to all of the appropriate restrictions. Commissioners can be especially diligent in making sure that key building code provisions related to health, safety, and neighborhood-specific requirements (zone restrictions) are followed.

Currently, ANC Commissioners often get involved in construction issues because their constituents demand it, but usually only after the permit has been issued and concerns are raised. Chasing the error after construction begins is often not successful in getting the error corrected. This after-the-fact review process results in great neighborhood frustration and allows violations of building code and zoning regulations to stay in place even though they would not have been allowed in the first place if brought to the attention of DCRA by Commissioners during the permitting process.

With 300 ANC Commissioners across the city and many projects approved every day, it is likely that only a small percentage of the projects would be of sufficient interest to constituents to warrant a Commissioner's time and effort to give comments on a project. However, where they do, their comments can be reviewed and taken into account along with those of other reviewers. The permits are likely to be enhanced as a result, with little or no cost or time delay to DCRA. In addition, some of the after-the-fact anger at DCRA and ANC Commissioners by neighbors will be avoided. Preventing problems from occurring in the first place makes a lot more sense than trying to correct them after they have been made. ANC Commissioners are in a unique position to spot problems ahead of time and thereby to be part of the team to help DCRA permit reviewers.

Attachment 2

Authorize ANC Commissioners to Submit Legally Sufficient Evidence of Violations of Building Code, Zoning, and Stop Work Orders

The Problem:

DCRA's compliance strategy for illegal construction and zoning violations has two major weaknesses: (1) the strategy relies primarily on the receipt of citizen complaints and (2) a DCRA inspector must observe the violation in person, and because there are too few of them, they are often late and/or the builder can hide what he has been doing from the inspector. As a result DCRA's enforcement program is rightly described as a "paper tiger." Without adequate enforcement, voluntary compliance—the heart of any compliance program—is not incentivized.

Proposed Solution:

Write specifically into the building code provisions specific to ANC Commissioners that are similar to those for ordinary citizens under the Trash Collection Noise Law, DC Law 17-259 and the new Leaf Blower Regulation Law which was enacted last Council session. This would allow Commissioners to file affidavits (including photos and video, as appropriate) of violations of stop work orders or illegal construction or zoning regulation violations. These affidavits would, under the new provision, be designated as acceptable as legitimate evidence in an administrative hearing on a violation. After making themselves available for cross examinations, these Commissioner witnesses could prove to be sufficient evidence to prove a violation.

Rationale:

Builders in the District today can reasonably assume that it is unlikely that they will be caught and penalized for violations of the building code, zoning regulations, and Stop Work orders. Except for the occasional one-time blitzes run last year by DCRA, the Department does not have an aggressive presence in the field where they looking for potential violations. Instead, DCRA depends on citizen complaints to identify potential targets. Alerted by citizens, Commissioners can learn how to verify a number of alleged violations, including a builder's ignoring a Stop Work Order or violating the setback requirements. Under the law, Commissioners are protected from liability, so they would be protected legally from retaliation by builders.

DCRA needs to make better use of the numerous eyes and ears of ordinary citizens who are geographically located in proximity to the worksite and can alert their ANC Commissioner to witness the violation. Commissioners' sworn testimony, bolstered perhaps by time-stamped photos and videos, would, in many cases, providing convincing proof of a violation—if their testimony were accepted as evidence in the administrative hearing. DCRA already employs this method of ensuring compliance for the noise from private trash trucks. Now with the ubiquitous presence of cameras associated with mobile phones, DCRA can empower Commissioners' eyes and ears not just to file a complaint, but also to help prove actual violations.

A major impact of this change in the role of citizens would likely be a substantial increase in "voluntary compliance" by builders. They would no longer have the confidence that they are working in relative secrecy on their sites. Citizens often have a "bird's eye view" of construction that DCRA does not have.

Attachment 2

Builders also know that neighbors are not always happy with construction taking place next door, so they cannot trust the neighbors to look the other way when they see the builder doing something illegal.

Of course, not every Commissioner affidavit would be useable in an administrative hearing. Some may be based on a misunderstanding of the regulations, but DCRA could train this interested cadre of Commissioners to improve their skills in this area. Of course, DCRA would need to exercise its professional judgment about the validity and adequacy of the evidence presented. However, even if some affidavits were put aside, empowering Commissioners to provide useable would be a major improvement in DCRA's compliance strategy.

Attachment 3

Require a Residential Certificate of Occupancy

The Problem:

Currently, the Zoning Administrator and DCRA enforcers have little or no leverage over a recalcitrant residential builder who violates the building code or zoning regulations in order to bring him into compliance. A famous case (within DCRA and in Wesley Heights) is 4540 Lowell Street NW in which the builder/owner has for five years defied the Zoning Administrator and refused to bring his residential building into compliance with the lot occupancy regulations. The Zoning Administrator can request the builder to submit his plans to come into compliance, but if the builder fails to do so, the Zoning Administrator has little or no leverage to make him do so. The Zoning Administrator lacks the authority to threaten or actually revoke the certificate of occupancy because no such certificate is required for residential property, in contrast to commercial properties.

Proposed Solution:

Require builders/property owners to obtain a certificate of occupancy for those residential construction projects that are extensive enough that they involve either (1) a raze or (2) a renovation major enough that the occupant cannot stay on the premises during the renovation. As part of this application for a certificate of occupancy, the builder should be required to submit a statement from a licensed third party (engineer, architect, etc.) registered with DCRA that the house, as built, conforms to the plans approved by DCRA. Allow the revocation of such certificate of occupancy for serious violations of the building code or zoning regulations where the violator repeatedly refuses to comply. Authorize fines for each day, not just on a one-time basis when the builder refuses to bring his building into compliance.

Rationale:

If residential builder/property owner were required to apply for a Certificate of Occupancy, it would accomplish two purposes: (1) it would require the builder to show at the end of the construction that he has met all the requisite requirements (a more thorough final inspection than now) and (2) it would give teeth to DCRA enforcement actions which lack force today, giving DCRA the leverage it now lacks to bring recalcitrant builders into compliance. In addition, requiring a licensed third-party to sign off on the building, as built, would greatly discourage builders/property owners from thinking that once they have a permit, they can built whatever they want.

Attachment 4

Allow DCRA to pierce the Corporate Veil of Limited Liability Corporations and thereby Sanction Repeated Violators of City Laws

The Problem:

It is well known that there are a few "bad apples" among those who design, construct, and operate buildings in DC. Yet, nothing seems to happen to these people, apparently because these individuals can form a separate LLC for each project and thereby hide their identify and prevent DCRA from imposing sanctions from multiple violations across properties. In addition, it is not clear that DCRA has the sanction authority to deal with such multiple violations.

The Solution:

Require permit applicants and corporate owners/operators of buildings to disclose to DCRA the actual owners of a LLC. Provide DCRA explicit authority to sanction builders/operators who repeatedly violation city zoning and building code laws.

Rationale:

DCRA now appears to treat each permit application as a single item with no links to previous permits where there may have been egregious violations of city laws. Much of this problem apparently can be traced to the use of multiple LLCs to hide/isolate the liability for each project. With a piercing of the corporate veil, DCRA could link these instances and by imposing sanctions, prevent future violations by these same "bad apples." Having an explicit set of sanctions authorized by the Council would also help DCRA carry out this important function.

Attachment 5

Benchmark DCRA against Similar Agencies Across the Country

The Problem:

When asked how their productivity and enforcement record compare to those of similar agencies in cities such as Chicago or Denver, the staff has been known to answer, "DC is not Chicago {or Denver]"

This, of course, is a true statement, but is DC so unique that it can't be compared to any other jurisdiction in the country? Unlikely. For example, DCRA states proudly that it does 50,000 inspections a year. Is this a high (good) number? Compared to what? Without any comparisons to other cities, adjusted for similar population, number of permits issued a year, etc., how does the Council or the public whether DCRA is doing a good job or a terrible job?

The Solution:

Direct the DC Auditor to do a benchmarking study of other "DCRA's" across the country to assess DCRA's performance and to identify best practices that might be considered by DC. DCRA could certainly be asked to assist the DC Auditor in this benchmarking, but this task requires some independence and objectivity in order for it to be credible and therefore usable by the City Council to adjust the performance of DCRA going forward.

Rationale:

Even the proposed Department of Buildings Establishment Act of 2019 falls short in this regard. It calls for a Business Process Analysis and Reengineering Assessment, but has to explicit mandate to look outside the borders of DC for what others across the country have learned and put into practice. That bill also assigns this job to DCRA itself alone so that there is likely to be little criticism of current policies and practices and only proposals for shiny new projects to try. The business of DCRA is too important to this city to short cut this important function.

Attachment 6

Place all of DCRA's permit drawings and applications on line

The Problem:

Several years ago the Council gave DCRA money to put all of its permits on line. This has not happened. Instead, the emphasis of DCRA has been on tracking of permits instead of the substance of permits. This greatly decreases the ability of the public to hold DCRA accountable for its actions, except with regard to meeting deadlines. The substance goes ignored.

The Solution:

Require DCRA to put all of the permit documents on line so that citizens can see what decisions are being made and whether the permits comply with the building code and zoning requirements. Mistakes are made by permit writers and the sooner these mistakes are identified, the sooner they can be rectified.

Rationale:

Although DCRA declares that one can always ask for drawings or file a FOIA request, it is difficult and time consuming to get the drawings and other permit documents, so the builder has an overwhelming advantage in declaring that he is doing everything according to the permit, and the public has very little actual recourse. The playing field needs to be evened up so that those who care about health and safety have as much of a role to play as those who care about economic development. The two goals do not need to be in conflict, but the present economic incentives and DCRA policies either allow or even encourage builders to cheat, knowing it is highly unlikely they will be caught, and even if they are caught, of ever getting a serious sanction placed against them.

In short, mistakes are made by DCRA, but who would ever know it? Transparency and accountability are important and putting all the documents on line would go a long way to helping everyone see the job that DCRA is doing.

Attachment 7

Establish an Ombudsman for DCRA to help constituents

The Problem:

When one is having a hard time getting DCRA to do what they are required to do, including enforce the regulations, it is hard to get the attention of the person who can fix the problem. The problems are both education for the constituent about what is reasonable to expect and apparent non-performance by DCRA employees.

The Solution:

Establish an Ombudsman function either within DCRA or outside it (OANC?) whose job is not to convince the constituent that DCRA is doing everything it should be doing, but instead on arming the constituent with the knowledge of what is needed to convince DCRA to take a (different) action and how to push it forward through the Department. In the most egregious cases, the Ombudsman would help push the matter forward with DCRA and, where he/she runs into a brick wall, to elevate the matter within the Department. The Ombudsman should report once a year to the Council on what he has done, what he is finding out about how the Department REALLY functions and what suggestions he might have for improvements.

Rationale:

DCRA is very focused on "production" of permits and other services, and is not geared to help people when things are not going as they should. The result is great frustration on the part of constituents who feel they are getting the "run around" from DCRA staff or who believe a mistake has been made or an injustice done and they can't get the DCRA to address the issue. The Ombudsman would be a trustworthy face of the Department who would not try to defend the agency against criticism, but help legitimate concerns get advanced to a solution within the Department. It is possible that there would need to be two Ombudsmen—one for people trying to get permits, and one for those seeking redress or enforcement.

Attachment 8

Provide information about Compliance and Enforcement on DCRA Website

Here are possible Initial Entries on a DCRA Webpage focused on Compliance (and help to ANC Commissioners and the Public)

1. Building Permits
    a. Permit Plans
        i. How to obtain a copy of the plans
        ii. How to read and determine compliance re key aspects of the plans
            1. Front yard, side yard and back yard setbacks
                a. What limits apply to specific neighborhoods?
            2. Lot occupancy
            3. Gross Floor area
    b. Reporting possible non-compliance
        i. Illegal Construction
        ii. Zoning violations
            1. How distinguish between illegal construction cases and zoning violations.
        iii. How to find out the result of a report and the subsequent inspection
        iv. A permit thought to have been issued in violation of zoning regulations.
    c. Compliance statistics
        i. Illegal construction complaints over X Period
            1. Percentage found to be valid complaints by an inspector
        ii. Zoning violation complaints over X period
            1. Percentage found to be valid by an inspector
        iii. Number of notices of violation issued over X Period
        iv. Number of administrative hearings over X Period

v. Number of violation determinations made by administrative hearing
vi. Dollars of fines levied
vii. Dollars of fines collected.
viii. Most prevalent violations found over X period
ix. Results of blitzes in various Wards

d. Who to contact for help in determining whether or not there is a violation

2. Noise Complaints
   a. Explain the regulations in simple terms
   b. How to schedule an inspection of a repetitive noise nuisance likely to be a violation of the ordinance
3. High Grass complaints
   a. Explain the program in simple terms
   b. How to schedule a cleanup and what the likely timing will be
4. Abandoned or neglected buildings
   a. Explain the program in simple terms
   b. How to schedule an inspection and what to expect in terms of possible outcomes.
5. Special Events (such as block parties)
   a. Explain the permit program in simple terms
   b. How to get a permit
   c. How to complain about a possible illegal special event
6. Business licenses
   a. Explain the current compliance program
   b. How to find out whether a particular business is licensed
   c. How to complain about a business that appears to be doing business in the District but is not licensed and the possible outcomes of such a compliant.
7. Other

Attachment 9

Increase the Resources for Compliance within DCRA

The Problem:

Compliance lacks a vocal set of stakeholders to clamor for improvements. New resources are being devoted to the shiny new processes and techniques for granting permits, but little attention is given to ensuring compliance with these permits once they are issued. Unsafe and illegal buildings are being constructed; people are being driven out of low cost housing by landlords who can ignore DCRA's requirements. Others stay, but have to live in unsafe conditions. In short, DCRA is a "paper tiger" when it comes to enforcement/compliance efforts. There is a lot of money to be made by ignoring building, zoning, and safe housing requirements, and the developers know it and some are unscrupulous to take advantage of it.

The solution:

Increase DCRA's Compliance and Enforcement budget and staff resources. DCRA's motto has been Safe and Simple. However, almost all of the emphasis has been on the Simple part of the equation and not on the Safe part. The Compliance portion of DCRA needs both a sizeable **earmarked** budget increase but also careful oversight by the City Council.

Rationale:

It makes no sense to spend all this money issuing permits that are extensive in their requirements on builders and then not having a system by which these builders are "encouraged" to voluntarily comply and strongly sanctions when they choose not to.

DCRA's inspectors are so few that they are not out in the field looking for possible violations; instead they have time only to do what is required by the regulations and to some extent responding to complaints of illegal construction. If the police Department ran its enforcement that way, without officers on patrol, we would have a lot more crime in this city.

The Department of Buildings Establishment Act of 2019 contains some provisions that will make oversight easier by the City Council because important statistics will be kept and reported on. However, the bill is disappointing because these reforms go into effect only years from now. There is no reason why DCRA can't start collecting these statistics now and reporting them to the Council and the public. An increased budget and vigorous oversight need to begin immediately.

AOBA
— APARTMENT AND OFFICE —
BUILDING ASSOCIATION OF
METROPOLITAN WASHINGTON

Chairman Phil Mendelson
Committee of the Whole
Roundtable Hearing on

The Department of Consumer and Regulatory Affairs:
"What Issues Should the Committee Pursue?"

February 6, 2019

Good afternoon Chairman Mendelson, members of the Committee of the Whole and staff, **I am Randi Marshall, Vice President of Government Affairs for the Apartment and Office Building Association of Metropolitan Washington (AOBA)**. AOBA is a non-profit trade association representing owners and managers of more than 67,000 multi-family apartment units and over 91 million square feet of office space in the District.

With me today is Matthew Weaver, Construction and Development Manager of Daro Management. We are pleased to appear today to provide recommendations to the Committee on "What issues should be pursed" related to the Department of Consumer and Regulatory Affairs' (DCRA).

It should come as no surprise that DCRA is arguably the most important District agency for AOBA's members. AOBA members are continuously seeking permits for tenant build-outs, having plans reviewed via Project Dox, and having inspections conducted. Thus, the efficiency of this vital agency is an essential component of preserving the District's housing stock and ensuring the safety of all built structures. Today, I will focus my remarks on the Proactive Inspections Program, while Mr. Weaver will discuss the permitting process.

PROACTIVE INSPECTIONS

Since its inception, AOBA has been a strong supporter of the proactive inspection program as it endeavors to protect the health and safety of our tenant communities. DCRA has operated the system of proactive inspections in which all residential buildings in the District are inspected on a rolling basis at least once every five years. Procedurally, once the inspected unit successfully completes its inspection, or even abates an identified violation within the required timeframe,

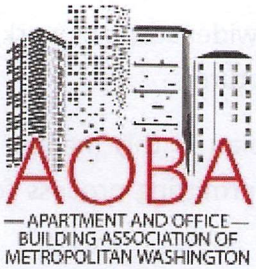
DCRA will issue a certificate of compliance that is good for five years. Recently, however, AOBA members who are still within their existing five-year compliance period, received notification that DCRA has again revised the program from a five-year review cycle to a two-year review cycle. While this deviation from the frequency of inspection procedures may seem like an attempt to target the 'bad actors' or properties with persistent complaints, this procedural change raises concerns for those properties that have a record of compliance, an absence of violations and no change in ownership. This change in policy also runs counter to the initial intent of the staggered inspections, which was to allow greater focus and more inspections on non-complying properties – not to put all on same inspection schedule.

What is clear from our analysis of this program is that the acts of housing code abuse do not come from housing providers who are on the five-year review cycle. Rather, they come from housing providers who fail to abate a cited violation and whose properties are more appropriately placed on a two-year re-inspection cycle – unlike the vast majority of responsible housing providers. In lieu of changing the inspection cycle, AOBA recommends that DCRA prioritize its inspection efforts on vigorously enforcing compliance by housing code violators who have failed to abate conditions and timely respond to tenant complaint-based reported violations. AOBA also urges the agency to create a Proactive Inspections Task Force, similar to what it convened when the program was established. AOBA believes that this task force, which could be comprised of housing providers, tenant advocates and agency representatives, could be charged with aiding DCRA in an analysis of the program to categorize the types of housing code violations that are annually cited to provide educational outreach to housing providers; identify strategies the minimize the prevalence of repeat violators and identify ways to enhance the program's goal to correct dangerous and unhealthy housing conditions.

In addition to our concerns about the two-year inspection cycle, significant concerns also persist with the agency's approach to buildings subject to existing inspection programs. Since the inception of the Proactive Inspections Program, properties who receive Low Income Housing Tax Credits, who are participants in Section 8 and those who are subject to the U.S. Housing and Urban Development's Real Estate Assessment Center inspections were exempt from the proactive inspection fees. This regulatory determination was made by DCRA and the Council in 2009. This body took note of the unnecessary duplication that would result from DCRA conducting building inspections and charging an additional fee where quality housing standards, including compliance with housing/building codes, were being assured by another branch of the government. However, again, within the past two years, AOBA's members, who should still be considered exempt as participants of these other inspection programs, have received notice of the fees and inspection compliance from DCRA.

CONCLUSION

In conclusion, AOBA's members are committed to providing quality housing and welcome vigorous enforcement of the District's housing codes. We encourage and support the District's efforts to ensure that tenants are residing in rental units that are maintained in a habitable and livable condition. However, we urge the agency to engage in a more thoughtful administrative mechanism to target the bad actors and problem properties for which more frequent inspections are required. Thank you for the opportunity to share our concerns about the housing inspections program. We will be happy to answer any questions from the Committee.



Chairman Phil Mendelson
Committee of the Whole
Roundtable Hearing on

The Department of Consumer and Regulatory Affairs:
"What Issues Should the Committee Pursue?"

February 6, 2019

Good afternoon Chairman Mendelson, members of the Committee of the Whole and staff, I am **Matthew Weaver, Construction and Development Manager of Daro Management**, which owns and manages over 800 rental units in the District of Columbia. I appear today on behalf of the Apartment and Office Building Association of Metropolitan Washington (AOBA) and I am pleased to provide recommendations to the Committee on the existing permitting process under the Department of Consumer and Regulatory Affairs' (DCRA).

PERMITTING

In the District, nearly half of rental housing units are within a building over 70 years old. That is an estimated 2,400 residential buildings and 33,000 rental units, all with varying degrees of aging systems and infrastructure, as well as outdated finishes and fixtures.

Most professional housing providers of older residential buildings develop a Master Plan, as a best practice of asset management, to address the issues of an aging building. A master plan allows a housing provider to outline and budget its future capital improvement efforts for the building.

Ideally, to execute a master plan a housing provider would apply for a single permit for the entire building and all its units, which would allow for one set of plans to be submitted for review under the single permit. This approach would allow a housing provider to keep a single building permit open and renovate units as they are vacated. As each renovation is completed, a temporary certificate of occupancy (C of O) could be issued, which would allow the newly renovated unit to be available for rent immediately. This single building permit would also allow

a housing provider the ability to have a wider scope of work, should there also need to be updates to building-wide systems and infrastructure.

However executing a master plan in this manner under the current DCRA permitting process is not possible. The current permitting process for an occupied residential building is cumbersome and expensive.

If a housing provider were to use the single permit approach for multiple units, currently DCRA would not issue a C of O until all the unit renovations under that permit had been completed. Ultimately, this approach would likely leave multiple fully renovated units vacant for several months, while they wait for the other units under the permit to be completed. This results in an avoidable loss of revenue for housing providers and a smaller pool of available units for renters.

The other existing approach is to apply for an individual building permit for each unit as they become vacant. Despite the fact that most rental units have identical layouts and most housing providers opt to use the same plans for all unit renovations; this approach requires housing providers to resubmit the same set of plans for re-approval for each permit issued. Though this approach may add months of downtime to each unit on the front end, the advantage of this approach is being able to obtain a C of O once the work is complete so that the unit can immediately be available for rent.

We recommend that the Committee work with DCRA to improve the permitting process, and consider implementing a Master Plan Permitting process. We believe this recommendation would present an opportunity to create efficiencies that would support Mayor Bowser's housing preservation goals for the District and make capital improvements cheaper and easier.

CONCLUSION

In conclusion, AOBA and Daro Management look forward to working with **Acting DCRA Director Ernest Chrappah** *("Sh-rah-pah")* and his team concerning these process recommendations. Thank for you the opportunity to share our concerns. We will be happy to answer any questions from the Committee.

D.C. POLICY CENTER

OVERSIGHT HEARING ON

The Department of Consumer and Regulatory Affairs: What Issues Should the Committee Pursue?

Before the Committee of the Whole

Councilmember Phil Mendelson, Chairman

February 6, 2019 11:00 AM

John A. Wilson Building

Testimony of Dr. Yesim Sayin Taylor

Executive Director

D.C. Policy Center

info@dcpolicycenter.org

Good morning, Chairman Mendelson and members of the Committee of the Whole. My name is Yesim Sayin Taylor and I am the Executive Director of the D.C. Policy Center, an independent, non-partisan think tank committed to advancing policies for a strong and vibrant economy in the District of Columbia. I thank you for the opportunity to testify on the "The Department of Consumer and Regulatory Affairs: What Issues Should the Committee Pursue?"

On January 22, Chairman Mendelson, together with nine other members of the D.C. Council, reintroduced the Department of Buildings Establishment Act[1] that would split the Department of Consumer Affairs into two entities—one called "the Department of Buildings" that would oversee buildings inspections and permitting, and another that would assume the remaining duties under of DCRA.

Much of the attention regarding this proposal has focused on the proposed Department of Buildings and whether splitting DCRA could improve the permitting and inspection processes. But the bill—whether one agrees with its approach or not—is important because it also shines light on the regulatory and licensing practices at DCRA and what they could mean for the District's economy, its small businesses, and its low-skilled residents.

Outside of permitting, DCRA is also responsible for administering many business regulations, particularly professional licensing for many trade, retail, and personal services. In essence, DCRA, through various professional boards, is the gatekeeper for who is qualified for holding certain jobs in D.C. DCRA's actions in this regard can expand or limit opportunities, especially opportunities for low income residents in the District of Columbia.

To wit, DCRA alone, per the information on its website, regulates 125 occupational and professional categories organized under 18 different boards

[1] B23-0091 - Department of Buildings Establishment Act of 2019, introduced by Chairman Mendelson and Councilmembers Silverman, Nadeau, Cheh, Allen, T. White, Bonds, R. White, Evans, McDuffie, Gray, and Grosso at Committee of the Whole on January 22.

under its Occupational and Professional Licensing Administration. This is in addition to 20 other boards that are responsible for the licensing over 50 health and mental health occupations.

There is scant data on who is licensed by DCRA, and where they work or reside. The latest information we could glean comes from a 2017 Annual Report from the Occupational and Professional Licensing Administration, which provides data for 12 of the 18 boards under DCRA.[2] This information shows that during that year, DCRA licensed 69,863 individuals for professional activities in DC. This accounts for nearly 12 percent of private sector employment in the city in that year.

Licensing Board	Licensed
Board of Accountancy	3,074
Board of Architecture, Interior Design, and Landscape Architecture	3,853
Board of Barber & Cosmetology	6,794
Board of Funeral Directors	382
Board of Industrial Trades	15503
Board of Engineering	6794
Board of Real Estate Appraisers	778
Board of Boxing and Wrestling	611
Real Estate Commission	14,391
Board of Security	16,004
Athlete Agents	9
Tour Guides	1,670
Total	69,863

Source: Occupational and Professional Licensing Board and Commission, 2017 Annual Report.

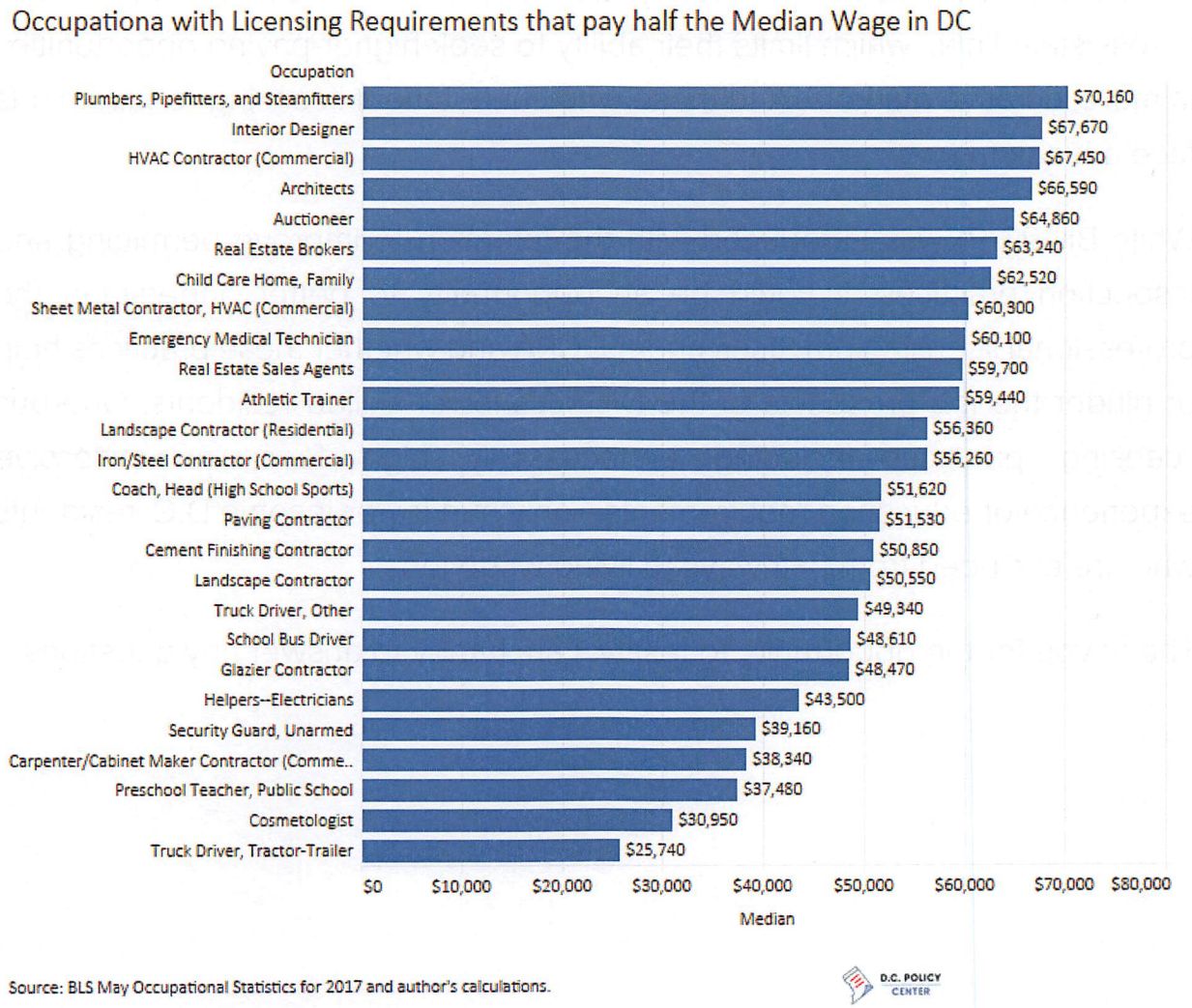
[2] DCRA (2018), Occupational and Professional Licensing Board and Commission, 2017 Annual Report. Available at https://www.dcopla.com/bpe/wp-content/uploads/sites/17/2018/06/OPLBC-Annual-Report-2017-Final.pdf.

Using this data, as well as data compiled by the Institute for Justice[3] and the National Conference of State Legislatures,[4] we identified 59 different occupations that do not require significant post-secondary credentialing (such as those required for doctors, counselors, social workers, or teachers) but require licensing by DCRA.

Comparing this data to BLS occupation wage data shows that most of the licensing under DCRA focuses on middle or low-wage jobs that are attractive to low-skilled D.C. residents who do not have high levels of education or formal training. Of the 59 occupations licensed by DCRA that we could match to BLS occupational categories, 42 are occupations with middle-wage jobs—paying below the median salary in the region and above minimum wage. Furthermore, 14 of these occupations are associated with lower skill levels but living wages, with median wages between $27,000 and $35,000, These occupations, according to the BLS, collectively employ over 20,000 workers.

[3] Dick M. Carpenter II, Ph.D., Lisa Knepper, Kyle Sweetland and Jennifer McDonald (2018), License to Work, 2nd Edition, District of Columbia Profile, available at https://ij.org/report/license-work-2/ltw-state-profiles/ltw2-d-c/

[4] Suzanne Hultin (2018), The National Occupational Licensing Database, NCSL. Available at http://www.ncsl.org/research/labor-and-employment/occupational-licensing-statute-database.aspx#Database



Why should we care about occupational licensing? Occupational licensing plays an important role in employment, wages, mobility, and the health of the labor market. State licensing can act as an impediment to worker mobility and when onerous, can close paths to well-paying jobs for low income residents.[5] Licensed workers generally earn more and experience less unemployment than their unlicensed partners across the country. This may seem like a good thing, but only for those who can pay the fees or meet the regulatory requirements. Others who are willing to work hard, or learn on the job, are left

[5] Ryan Nunn (2016), Occupational Licensing and American Workers, the Hamilton Project, available at http://www.hamiltonproject.org/papers/occupational_licensing_and_the_american_worker?_ga=2.210153495.305698934.1549394548-1974874714.1537810816

behind. Licensing also limits mobility. Licensed workers are less likely to move across state lines, which limits their ability to seek higher-paying opportunities in more lucrative markets. And those who cannot meet licensing requirements face a bleak future.

While Bill 23-91 was introduced with the intention to improve permitting and inspection practices, it could be an opportunity to better understand the professional licensing practices under DCRA and whether these practices help or hinder the job prospects of the District's lower-skilled residents. Onerous licensing practices—including unnecessarily high fees, or excessive experience or education requirements—only hurt lower-income D.C. residents who are excluded from pathways to living wage jobs.

Thank you for the opportunity to testify. I am happy to answer any questions.

Appendix – Employment and Median Salaries for Occupations licensed by DCRA (2017)

Code	Occupation	Employment in DC	Share of Metro Employment	Median Salary in DC
33-9032	Security Guard, Unarmed	13,900	38%	$39,160
53-3033	Truck Driver, Tractor-Trailer	1,740	12%	$25,740
25-2011	Preschool Teacher, Public School	1,320	13%	$37,480
39-5012	Cosmetologist	960	12%	$30,950
53-3041	Taxi Driver/Chauffeur	410	11%	$34,130
53-3021	Bus Driver, City/Transit	390	9%	$36,290
47-4041	Asbestos Worker	150	23%	$36,470
47-3012	Carpenter/Cabinet Maker Contractor (Commercial)	130	9%	$38,340
41-3099	Auctioneer	3,670	12%	$64,860
21-1021	Child Care Home, Family	2,100	34%	$62,520
29-2041	Emergency Medical Technician	1,560	47%	$60,100
47-2152	Plumbers, Pipefitters, and Steamfitters	1,020	11%	$70,160
53-3022	School Bus Driver	970	NA	$48,610
27-1025	Interior Designer	670	33%	$67,670
31-9091	Dental Assistant	640	10%	$48,030
41-9022	Real Estate Sales Agents	620	14%	$59,700
27-2022	Coach, Head (High School Sports)	580	11%	$51,620
53-3032	Truck Driver, Other	510	3%	$49,340
17-3011	Architects	480	25%	$66,590
47-2051	Cement Finishing Contractor	470	16%	$50,850
47-2141	Painting Contractor	440	9%	$53,520
49-9021	HVAC Contractor (Commercial)	350	5%	$67,450
47-2121	Glazier Contractor	350	21%	$48,470
41-9021	Real Estate Brokers	170	13%	$63,240
47-2211	Sheet Metal Contractor, HVAC (Commercial)	150	6%	$60,300
47-3013	Helpers--Electricians	130	7%	$43,500
47-2071	Paving Contractor	130	11%	$51,530
47-2071	Painting Contractor	130	11%	$51,530
47-2221	Iron/Steel Contractor (Commercial)	130	15%	$56,260
29-9091	Athletic Trainer	80	30%	$59,440
47-2161	Mason Contractor (Commercial)	70	70%	$56,360
47-2161	Landscape Contractor (Residential)	70	70%	$56,360
37-1012	Landscape Contractor	60	2%	$50,550
13-2011	Accountants	10,860	28%	$89,950
11-9141	Property Managers	1,640	33%	$70,940
47-2111	Electricians	1,190	11%	$77,420

Source: BLS, May 2017 Occupational Employment Statistics, available at https://www.bls.gov/oes/current/oessrcst.htm

Legal Aid Society
OF THE DISTRICT OF COLUMBIA
MAKING JUSTICE REAL

Testimony of Beth Mellen Harrison
Supervising Attorney, Housing Law Unit
Legal Aid Society of the District of Columbia

Before the Committee of the Whole
Council of the District of Columbia

Public Oversight Hearing Regarding:

"The Department of Consumer & Regulatory Affairs:
What Issues Should the Committee Pursue?"

February 6, 2019

The Legal Aid Society of the District of Columbia[1] welcomes this opportunity to share our thoughts about the performance of the Department of Consumer & Regulatory Affairs ("DCRA") and the issues this Committee should pursue in its oversight of the agency, as well as in considering possible legislative reform.

Legal Aid provides advice, brief services, and representation to hundreds of tenants in the District every year. Many of these tenants are living in substandard conditions, in homes with serious housing code violations that threaten the health and safety of their families. The failure of DCRA to enforce the housing code and protect tenants is an issue of critical importance to our client community.

DCRA Fundamentally Fails to Enforce the Housing Code and Protect Tenants

In past testimony, we have highlighted problems that we continue to observe in DCRA's rental housing inspections program. Too often, tenants encounter obstacles in scheduling inspections, a variety of difficulties during the inspection process, and challenges obtaining reports after the inspection process. Even when violations are found, too often the agency fails to pursue fines and other remedies against landlords who have broken the law and also lacks strategic focus to target problem landlords. The result is under-enforcement of the housing code.

Many of the concerns raised by tenants and advocates in past testimony before this Committee, including by Legal Aid, were confirmed in a recent report by the D.C. Auditor:[2]

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[1] The Legal Aid Society of the District of Columbia was formed in 1932 to "provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs." Over the last 87 years, tens of thousands of the District's neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the areas of housing, family law, public benefits, and consumer protection.

[2] Office of the District of Columbia Auditor, *Housing Code Enforcement: A Case Study of Dahlgreen Courts* (Sept. 24, 2018).

— DCRA does not have sufficient inspectors to carry out its mission of enforcing the housing code.

— DCRA chooses to use its discretion to show leniency to landlords.

— Because of lax enforcement by DCRA, landlords escape fines and other penalties, despite ongoing violations.

— DCRA does not calibrate its enforcement actions to target problem landlords.

— DCRA's recordkeeping practices are inadequate, leaving tenants, advocates, and the Council in the dark about the agency's enforcement track record.

While the Auditor's report focuses on the current state of enforcement at DCRA and the leadership of recently-departed Director Melinda Bolling, it is important to note that the problems identified by the Auditor have been ongoing for years. It has been over ten years since the *Washington Post*'s investigative series on the systemic failures in DCRA's rental housing inspection program, including a near total failure to cite violations or assess or collect fines against landlords. The *Post*'s conclusions were based on a review of thousands of court records and agency documents. DCRA's Director at the time, Linda Argo, responded by assuring the public that the agency would provide more training to employees and develop a system to better track inspections and re-inspections.[3]

In the decade that has followed, Legal Aid, other providers, and the Council itself have repeatedly sought data from DCRA to demonstrate that it has righted its enforcement approach, to no avail. Legal Aid continues to see far too many cases in which DCRA fails to cite landlords for violations, perform necessary re-inspections, assess fines, or collect fines, leaving tenants living in unsafe and unhealthy conditions. Through multiple directors, DCRA continues to come up short at every step in the enforcement process.

In addition to the issues identified above, we recommend that the Committee focus on the following ongoing challenges at DCRA:

— DCRA's proactive inspections program is not effective and continues to pass buildings where significant housing code violations exist.

— DCRA does not effectively prioritize its use of the Nuisance Abatement Fund to focus on particularly egregious health and safety violations and/or cases where use of the Fund can prevent imminent displacement of tenants or preserve affordable units.

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[3] Debbie Cenziper & Sarah Cohen, A Failure in Enforcement, *Washington Post*, Mar. 11, 2008, http://www.washingtonpost.com/wp-dyn/content/article/2008/03/10/AR2008031003193.html.

— DCRA's failure to inspect or cite for mold leaves far too many tenants without options to force their landlords to make repairs.

Legal Aid Has Yet to See Improvements in DCRA's Performance

DCRA has reported to this Committee that it has made or is in the process of making various changes to its policies and procedures with respect to residential housing inspections. We appreciate the agency's efforts to make changes. We also look forward to working with Interim Director Ernest Chrappah on the issues outlined in our testimony. Unfortunately, we have not yet seen improvements in DCRA's performance.

Tenants still do not have access to basic information about enforcement actions being taken by DCRA regarding their own units. DCRA launched PIVS 2.0, its updated online public portal, to much fanfare last year. But in our experience, the system continues to contain inaccurate information. Moreover, even the upgraded interface does not provide access to inspection reports or enforcement documents and does not tell a tenant where a case is in the enforcement process.

During the past year, Legal Aid has represented a tenant at Oak Hill Apartments, part of the Sanford Capital portfolio. Our client works full-time in the District and lives in the unit with his partner and their children. DCRA inspected his unit in late 2016 and issued a notice citing multiple violations. His unit should have been re-inspected in 2017, as part of DCRA's review of the entire Sanford portfolio.

In looking up his building in PIVS, however, no records appear. Our client also has not had any contact with DCRA since the inspections of his unit. He does not know if DCRA issued a notice of infraction, issued or collected fines, or otherwise took any enforcement actions. He does not know if DCRA found violations in any of his neighbors' units. What he does know is that two years later, his unit continued to have dozens of serious housing code violations, including the same issues cited by DCRA in 2016. Among the more serious issues, his unit had an unabated roach infestation, water damage from multiple floods, insecure front and balcony doors, and insufficient heat.

Thankfully, this tenant came to Legal Aid for help. We were able to negotiate with the receiver for the property for comprehensive repairs to be performed on his unit. Without our intervention, however, this tenant and has family would still be living in unsafe, unhealthy conditions.

Legal Aid currently is working with one such multifamily rental property in Columbia Heights. This fall, a Legal Aid inspector visited over twenty units in the building (representing over two-thirds of the property) and found hundreds of potential housing code violations, including issues such as water damage to ceilings and walls, roach and mice infestation, and entry doors that are not secure. Two months later, this same property passed a proactive inspection with DCRA. We are in the process of following up with these tenants but do not believe that the owner has yet completed the level of repairs that would be needed to address the violations found by our inspector.

This Committee Should Move Forward with the Department of Buildings Establishment Act – and Should Strengthen the Proposal

We believe that a comprehensive approach to reforming housing code enforcement in the District is needed to fully address these problems, including establishment of an independent rental housing inspections agency. Legal Aid supports moving rental housing inspections out of DCRA altogether, as envisioned by B23-0091, the Department of Buildings Establishment Act, and believes the Act should go even further.

At the end of the day, Legal Aid believes that many of DCRA's challenges with respect to rental housing inspections stem from a broken agency culture. DCRA does not have a clear sense of mission to enforce the housing code, and it brings neither a public health nor strategic perspective to its work. The focus of DCRA's overall mission is business development and regulation, and far too often it appears that landlord interests are trumping tenant interests in the realm of rental housing inspections. There are numerous steps DCRA could take to improve its inspections process and enforcement process. But without a transformation in agency mission and culture, we fear that real change never will be realized, and tenants throughout the District will continue to live in unsafe conditions.

Legal Aid has come to a similar conclusion as the many members of the Council who signed onto the Department of Buildings Establishment Act: the wide breadth of DCRA's mission and its lack of a strong enforcement and consumer protection culture has impaired its efficacy. However, Legal Aid suggests that the Council go further and establish an independent agency specifically tasked with rental housing inspections and enforcement. Should the Council choose to proceed with the current framework for a Department of Buildings, as envisioned in Bill 23-0091, it should ensure that the Department's structure and procedures will lead to an effective inspections and enforcement regime. Legal Aid provided more detailed comments on how a new agency should be structured in our April 2018 testimony on the previously-introduced version of the Department of Buildings Establishment Act, Bill 22-0669.[4]

The Council Should Adopt Legislative Changes Recommended by the Auditor

In its recent report, the D.C. Auditor issued a set of 21 specific recommendations for Council action to improve enforcement of housing code violations.[5] Legal Aid endorses these recommendations and believes further steps are needed to ensure that tenants in the District can live in safe, healthy housing, and that the District government is able to identify and take action against landlords who fail to maintain their housing to the standards of the housing code. Some of these recommendations were addressed in the Department of Consumer and Regulatory

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[4] Written Testimony before the Committee of the Whole Council of the District of Columbia, Public Hearing Regarding Bill 22-0669 "Department of Buildings Establishment Act of 2018", https://www.legalaiddc.org/wp-content/uploads/2018/04/Legal-Aid-Testimony-re-B22-0669-FINAL.pdf.

[5] *Housing Code Enforcement: A Case Study of Dahlgreen Courts*, *supra*, at 46-52.

Affairs Omnibus Amendment Act, Bill 22-0317. Legal Aid supports combining the recommendations that remain and other proposals outlined below into a comprehensive, omnibus bill to be enacted during this Council period.

1. The Council should mandate tighter enforcement timelines and stricter procedures for DCRA to follow. Narrowing DCRA's enforcement discretion is necessary because of the agency's systematic failure over a period of many years and under many directors to exercise its discretion appropriately. Legislation with tighter enforcement timeframes and stricter procedures for enforcement, with only narrow exceptions requiring documentation, will help address these concerns. Rather than requiring DCRA to adopt regulations – as the Auditor recommends – Legal Aid supports codifying these requirements by statute.

   More specifically, violation notices should be served by means other than mail to accomplish service on landlords quickly; properties with 30-day violation notices should be re-inspected 30 days later; criteria should be established for DCRA to bypass the notice of violation stage and proceed directly to issuing a notice of infraction with fines (e.g. for problem landlords); and properties with unabated violations at re-inspection should be referred for enforcement within a short period, such as 10 days.

2. The Council should require DCRA to publish information online on problem landlords. The Public Advocate for the City of New York publishes online a list of the 100 worst landlords based on open violation citations.[6] DCRA should adopt a similar model to publicize information about the worst landlord offenders. This will help educate prospective tenants and allow DCRA, the Office of the Attorney General, and private advocates to target their resources on problem landlords.

3. The Council should create other reporting requirements, including disclosure about individual cases and about the agency's enforcement track record. DCRA should improve its Property Information Verification System (PIVS) to provide more information about ongoing enforcement actions, to allow searches by owner across different properties, and to provide access to underlying documents such as notices of violation and notices of infraction. The Council also should mandate new reporting requirements for DCRA to publish information about its enforcement track record.

4. The Council should increase penalties for landlords with unabated housing code violations, particularly repeat offenders. The Council should increase fines across the board, with even higher fines for repeat offenders. The Council also should mandate that problem landlords meeting certain criteria receive the full penalty of daily fines, which DCRA currently does not assess. The Council also should adopt other penalties for landlords with unabated violations, such as removing their basic business license, barring such landlords from evicting tenants until they come into compliance, and preventing such landlords from receiving new financial support from the District.

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6 *See* https://advocate.nyc.gov/landlord-watchlist/worst-landlords.

The Council Should Consider Other Steps to Improve Enforcement of Housing Code Violations

The Council also should consider legislation to improve enforcement by enacting the following recommendations, supported by Legal Aid and other advocates:

- Inspectors should be trained and licensed to cite for mold, lead, and asbestos, so that tenants do not need to contact multiple agencies to obtain redress for safety issues in their units. (We support the Indoor Mold Remediation Enforcement Amendment Act of 2019, introduced yesterday, which would require DCRA inspectors to be licensed in mold assessment and remediation.)

- The agency should expand and improve the use of the Nuisance Abatement Fund to summarily correct substantial violations that landlords fail to fix and place liens on properties to recoup the cost:

    - The Fund should be governed by a set of criteria prioritizing its use, for example giving weight to the tenants' circumstances, the severity of the violations in terms of tenant health and safety, and the potential loss of affordable units if violations are not corrected, including termination of any applicable housing subsidies;

    - Use of the Fund should be required in certain particularly egregious circumstances, for example where violations pose a health and safety risk, the landlord has ignored multiple notices of such violations, and the property faces a risk of condemnation or loss of federal housing subsidies; and

    - Tenants should be allowed to submit information requesting that the Fund be used to correct particular violations, and DCRA should be required to investigate these requests to determine if the Fund should be used for those purposes.

- Legislation should clarify that DCRA has jurisdiction over and must inspect all residential housing in the District, including subsidized units.

- The agency should assign inspectors to the Landlord and Tenant Branch, similar to what currently occurs in the Housing Conditions Calendar, to make inspections readily accessible to those who need them and provide court oversight of needed repairs.

- The proactive inspections process should be formalized and strengthened:

    - Agency inspectors, not contractors, should perform proactive inspections.

    - All residential buildings in the District (or at least all built before a certain year) should be inspected at least every 4 years.

- The agency should prioritize buildings with "risk factors," such as a certain number of violations found during complaint inspections during a certain period, for targeted proactive inspections.

- The agency should ensure that proactive inspectors visit a substantial percentage of units in every building, varying based on building size (i.e., at least 50 percent of units for buildings under 25 units, at least 40 percent for buildings between 25 and 50 units, etc.).

- A "pass" on a proactive inspection should not be an impediment to subsequent complaint inspections, either for individual units or entire buildings.

- The agency should follow up on violations found during proactive inspections in the same way as a complaint-based inspection and refer an owner to enforcement if it does not abate the violations during the prescribed time period.

Conclusion

Thank you for this opportunity to share our thoughts on the performance of DCRA and the need for fundamental agency reform. We are eager to continue working with the Council, DCRA, and other stakeholders to realize a more effective system of housing code inspections and enforcement.

COMMITTEE OF THE WHOLE PUBLIC OVERSIGHT HEARING

Public Witness: Emily Annick
Purpose: To respectfully request revision of the DC Cottage Food Law

Thank you for enacting DC's Cottage Food law – I very much appreciate that you are looking to support small business entrepreneurs. I have the honor of being the very first licensed Cottage Food business in DC with my company, 440 Confections. I was licensed in November 2018 and have been working in a DC farmer's market for their winter market. Since 2013, I have been researching and working to achieve my free of starting a home-based bakery in DC. Through those years of research and work and having gone through the application process and started the business, I have gained the experience to identify what areas of the law need to be improved.

The purpose of a Cottage Food law is to encourage people to start a home-based food business, especially if they do not have the means or opportunity to start a commercial food business. Perhaps a stay-at-home mom would use this law to have a flexible way to make money during school hours. Or a low-income disadvantaged individual would use this law to have the power to drive their own way out of poverty. In order for the mission of this law to become successful, three things need to change:

1. Lift the revenue cap of $25,000

Currently, the law says producers can only make revenue of $25,000. As a CPA, I know that revenue does not factor in expenses. Most new business require a lot of start-up capital. How can someone hope to make money on this business if they immediately know they cannot make a living wage, especially in DC? They simply won't bother applying.

2. Allow producers to sell in avenues other than solely farmer's markets and public events

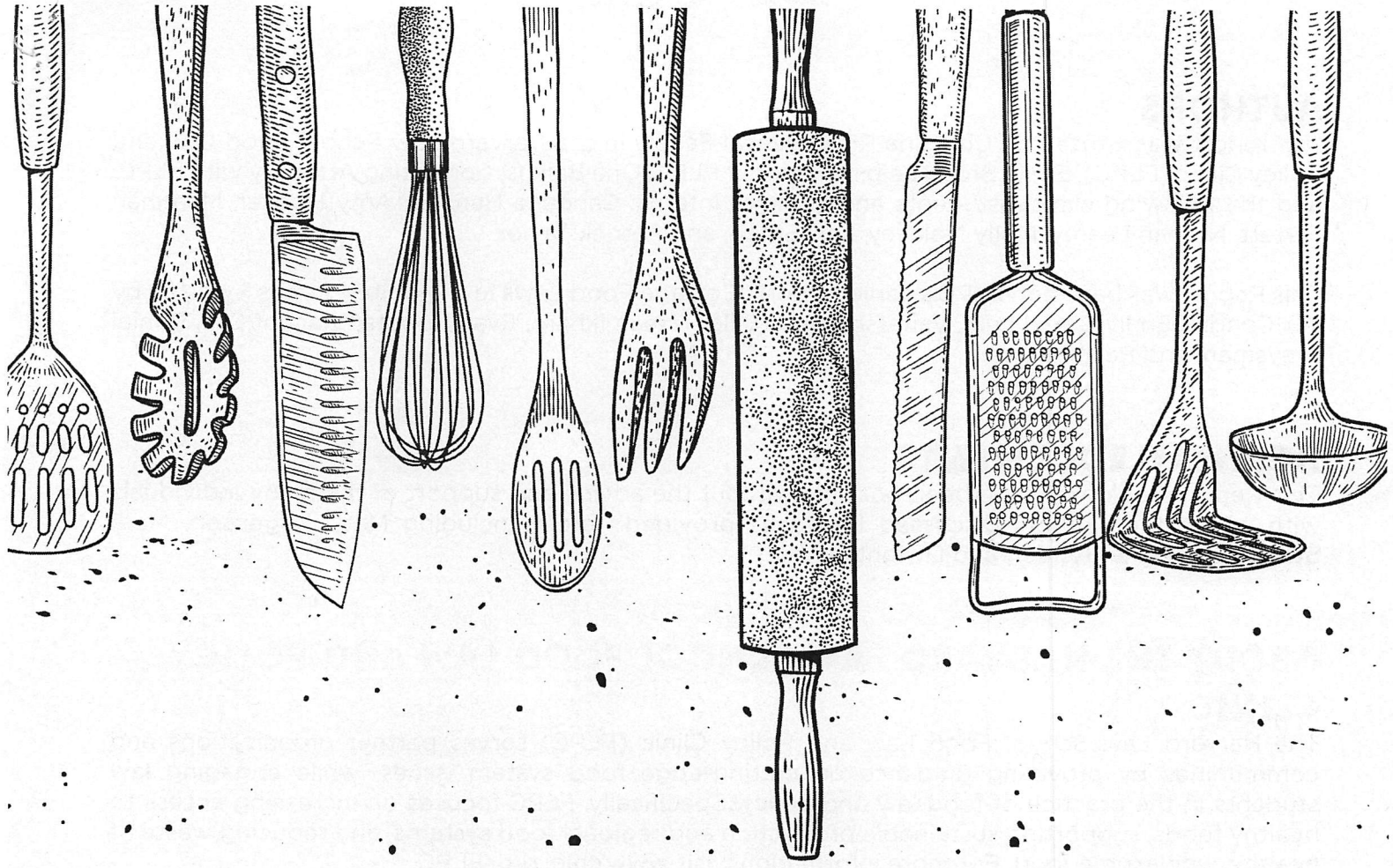
I have contacted numerous farmer's markets in DC and every single one has either indicated they are full every year or they already have a bakery at their market. I got lucky with my current market because the market manager was in transition, but they have already indicated they will likely be kicking me out for the regular season. Public events require very high vendor fees and it will be very difficult for home bakers to meet demand of something like Capital Pride Festival, where thousands of people attend. I have already had to turn away retail vendors who are requesting to sell my products (Mom's Market, flower delivery vendor, etc.). If people can't get into a market and public events aren't feasible, how can they survive? How discouraging.

3. Modify the requirement that producers must submit a new application for any menu change

Right now, any time you want to change one ingredient (perhaps something is out of stock) or add on a seasonal menu item, you must completely submit a brand-new application fee and pay $50 each time. Instead, I would propose an idea the Department of Health had where the law would require review and approval of each category of products. That gives producers a little bit of leeway to adapt to market conditions.

For comparison purposes, I reference a report by the Food Law and Policy Clinic of Harvard Law School titled "Cottage Food Laws in the United States" written in August 2018 where a part of it compares laws from state to state. Virginia has no sales cap (page 14), allows for some direct-to-consumer sales (page 12), and does not have a burdensome application process like DC does (page 13).

I love DC. I want to stay here. But I also want to be a successful small business owner. If I can't do it here, then I will absolutely have to go elsewhere. Please help me and other people use the Cottage Food law to become successful small business owners.



COTTAGE FOOD LAWS IN THE UNITED STATES

AUGUST 2018

FLPC
FOOD LAW
and POLICY CLINIC
HARVARD LAW SCHOOL

AUTHORS

This report was written by Christina Rice, Clinical Fellow in the Harvard Law School Food Law and Policy Clinic (FLPC), Emily Broad Leib, Director of FLPC, Ona Balkus, Consulting Attorney with FLPC, and the following clinical students and summer interns: Candace Hensley, Amy Hoover, Meaghan Jerrett, Nathan Leamy, Molly Malavey, Lexi Smith, and Patrick Taylor.

This Report was based on FLPC's earlier report "Cottage Food Laws in the United States," written by Alli Condra, Emily Broad Leib, Vanessa Assae-Bille, Tareah Ikharo, Evan Kubota, Vincent Lee, Daniel Preysman, and Raishay Lin.

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ABOUT THE HARVARD LAW SCHOOL FOOD LAW AND POLICY CLINIC

The Harvard Law School Food Law and Policy Clinic (FLPC) serves partner organizations and communities by providing guidance on cutting-edge food system issues, while engaging law students in the practice of food law and policy. Specifically, FLPC focuses on increasing access to healthy foods, supporting sustainable production and regional food systems, and reducing waste of healthy, wholesome food. For more information, visit www.chlpi.org/FLPC.

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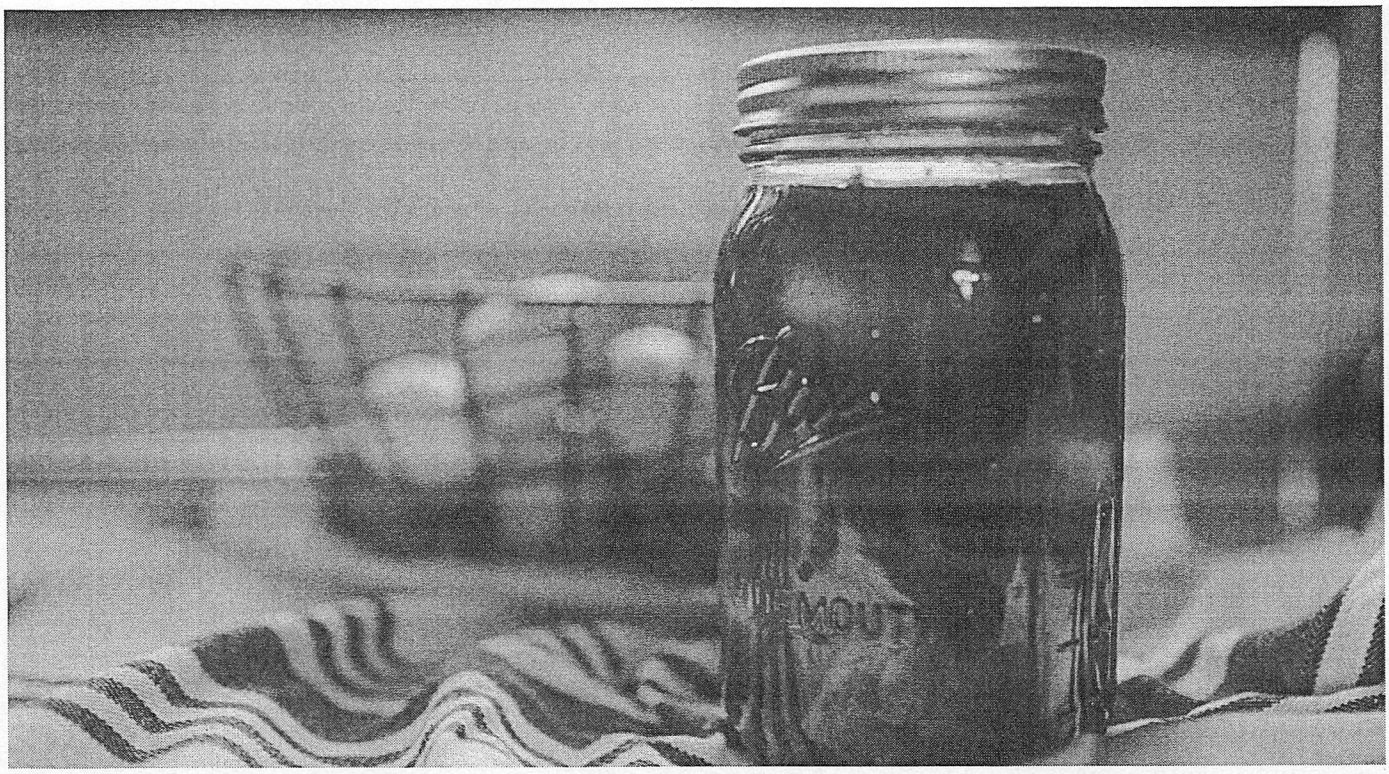


The rising demand for locally-produced food in the United States has fueled a dramatic increase in small-scale food production in recent years. Locally-produced food sales totaled at least $12 billion in 2014, up from $5 billion in 2008, and are expected to continue to grow to $20 billion by 2019.[1] Much of this locally produced food is sold at farmers markets, which have also increased dramatically, by 134% between 2004 and 2016.[2] A walk around your neighborhood farmers market will likely show that many vendors are no longer selling just raw produce and agricultural products, but also value-added products such as baked goods, jams, granola, popcorn, candy, coffee, tea, and other prepared goods that generate more revenue. These prepared goods, when made at home or outside a certified commercial kitchen, are commonly called "cottage foods."

Up until recently, food safety laws in most states would have prohibited the sale of cottage foods, since most state laws required that commercial food production take place in a certified commercial kitchen. To become certified, a kitchen must meet certain food safety requirements, such as having surfaces made of stainless steel and separate hand and dish-washing sinks. Although these stringent standards are important to ensure safe production of high-risk products, or products being produced on a large scale for mass distribution, they pose overly burdensome restrictions for producers making low-risk foods on a small scale. Further, state laws generally do not allow a home kitchen to be certified as a commercial kitchen. Building a commercial kitchen is too costly for many small-scale producers, as is paying for space in a shared commercial kitchen. But over time, things have begun to change. Given the increased interest in cottage foods in recent years, almost all states have changed their laws and now allow for at least some cottage food production and sales.

Legalizing cottage food sales has several important benefits. First, it promotes more spending in the local economy, and increases the amount of money circulated within it.[3] Second, it supports local farmers, who can generate more revenue by supplementing fresh produce sales with prepared

products that they can sell year-round and at a higher profit margin. Third, it encourages local business development, which in turn creates a stronger sense of community and increases quality of life for residents. Finally, it can serve as a launching pad for successful business creation and economic development. For example, in 2011, a baker named Mark Stambler was shut down by the local health department for illegally selling bread out of his home in Los Angeles.[4] In response, he successfully advocated for California's cottage food law and became the first legal cottage food producer in LA County.[5] His artisanal loaves grew so popular that he opened a brick and mortar store called Pagnol Boulanger and was named one of the Top Ten Bread Bakers of 2015 by Dessert Professional magazine.[6] Because Mark was able to start his business out of his home kitchen, he was able to test the market for his product and take a risk that ultimately led to a very successful business.

As of the publication of this report, the majority of states—all but New Jersey[7]—allow for the in-home production and sale of at least some cottage foods.[8] However, the scope of these laws varies widely. For instance, some states restrict home-based food production to a narrow category of producers, such as farmers, or to a limited list of food items. Others cap maximum sales. And although some cottage food laws are relatively easy to identify and understand, others must be extrapolated from several different state food safety laws that provide unclear guidance. Also, it might be difficult to find a state's cottage food laws because most states do not use the term "cottage food" in their laws.

This report is intended to help navigate these existing state cottage food laws, understand their commonalities and differences, and determine ways to better support cottage food businesses. This report is an updated version of the Food Law and Policy Clinic's 2013 Summary of Cottage Food Laws in the United States,[9] which was the first comprehensive analysis of state cottage food laws. This updated report also discusses new legal strategies being used by cottage food producers and draws on recent changes to state law to provide examples of how other states can strengthen their existing cottage food laws. Finally, this report includes a series of charts and a longer appendix summarizing cottage food laws in the 50 states as of June 2018.

This report can serve as a helpful resource for aspiring cottage food producers, cottage food advocates, and policymakers alike. However, the information provided here is necessarily limited. First, it focuses on state laws, even though in some states, local and county governments can have their own restrictions or requirements relevant to cottage foods. Second, this report should not be interpreted as legal advice, and individuals interested in starting a cottage food business should consult an attorney familiar with the relevant state and local laws before establishing such a business. Finally, as this is a rapidly evolving field of law, readers are advised to check for any subsequent updates to state laws and regulations.

FEDERAL AND STATE FOOD SAFETY LAWS AND COTTAGE FOODS

To understand cottage food laws, it is important to first understand the relationship between federal and state food safety laws. States have the primary authority to create laws that affect the public health and safety of their residents and to control commerce within state lines. The 10th amendment of the U.S. Constitution creates a system of federalism, which gives states sovereign power over all matters that are not within the federal government's limited powers granted by the Constitution. The federal government has clear authority over food circulating in interstate commerce, and food produced for sale only intrastate, such as through restaurants and retail stores, has traditionally been regulated by state law.

This means that each state can decide what safety rules to apply to food offered for sale in the state and whether to allow cottage foods to be sold within state lines. Although states develop their own laws, they do generally rely on the federal government for guidance, which is why many state food safety laws look very similar. This section will explain the roles of federal and state governments in developing food safety laws.

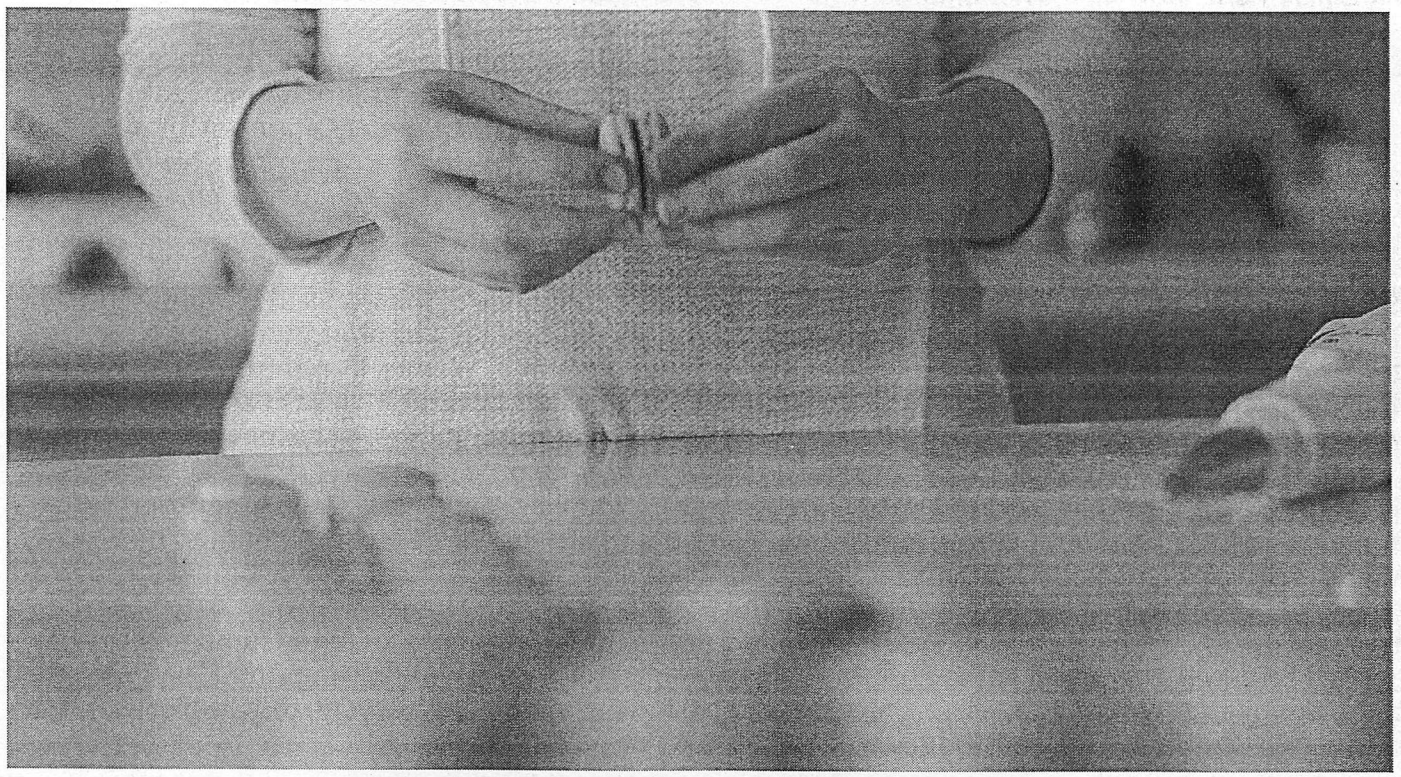
The primary federal guidance for states on food safety is the model Food Code published by the U.S. Food and Drug Administration ("FDA Food Code").[10] The FDA Food Code recommends certain requirements for kitchens in which food is prepared for sale to prevent foodborne illness. The FDA Food Code is updated every four years, most recently in 2017.[11] Local, state, and tribal governments use the FDA Food Code as a model to ensure their food safety laws are up-to-date with the best food safety science. The FDA Food Code is not binding unless a state or local government chooses to adopt it by passing a statute or by incorporating it into regulations. However, all fifty states and the District of Columbia have adopted some version of the FDA Food Code in whole or in part[12] because it was written by experts and represents a considerable investment of resources that states may not have the means to duplicate.[13]

The FDA Food Code, and therefore most state food codes, designates all locations where food is produced for sale or sold as "food establishments." Entities designated as "food establishments" must generally meet the regulatory requirements in the Food Code, such as obtaining relevant licenses, training, and permits; being subject to inspection; and utilizing certain equipment and building materials, for example, multi-compartment sinks, floors and walls made out of non-absorbent materials, and specific ventilation systems.[14] Under the language included in the FDA Food Code and most states, a home kitchen cannot be licensed as a food establishment.[15]

However, the FDA Food Code exempts several types of food producers from the "food establishment" definition and the linked requirements.[16] For the purposes of this report, the most relevant of these exemptions is for kitchens in private homes preparing and selling low-risk food for religious or charitable organizations' bake sales.[17] The FDA Food Code addresses the risk of food-borne illness by designating high- and low-risk foods. High-risk foods, called "time/temperature control for safety foods" (TCS foods) in the most recent FDA Food Code and "potentially hazardous foods" in prior FDA Food Codes, are foods that may develop pathogenic microorganisms if they are kept out of the correct temperature range for too long.[18] Meat, poultry, dairy, and shellfish are all examples of TCS foods. However, less obvious foods such as low-sugar jams, cooked vegetables, and low-acidity pickles and salsa are also in this class because they can support viral or bacterial growth if not properly stored. Though not technically defined in the FDA Food Code, foods that are not TCS are referred to as "non-TCS" or "non-potentially hazardous." Thus, under the charity bake sale exemption from "food establishment" requirements, the FDA Food Code allows for the home production of non-TCS foods, such as baked goods, certain jams, granola, and popcorn, when these foods are sold only at a religious or charity bake sale.

As discussed in the next section, in order to allow cottage food sales, most states have expanded this exemption in their own state laws. Since the FDA Food Code acknowledges that low-risk foods can be safely prepared at home and sold to the public at charity events, it provides a model for allowing sales of low-risk foods at other locations, such as farmers markets or the producer's home. Expanding the types of locations where cottage food producers can sell low-risk products is one of the most common features of state cottage food laws. Some state laws stop there, and others also expand upon the types of products that can be sold by cottage food operations and regulate these operations in other ways.

METHODS OF CREATING STATE COTTAGE FOOD LAWS



To legalize cottage foods, states have used a variety of policymaking tools alone and in combination. As described above, some states have amended the definition of "food establishment" in their adoption of the Food Code in order to allow home kitchens in private homes to prepare food for sale in venues beyond charity or religious functions. Some states have enacted more comprehensive legislation that defines the parameters for producing and selling cottage foods in the state. Some states enact administrative regulations addressing cottage foods, which can exist alongside legislation or independently. In at least one state, the state agency in charge of food safety has encouraged cottage food sales by posting guidelines for home-based food businesses on its website, despite absence of legislation or regulations allowing cottage foods. Another tactic for enabling cottage food sales is to enact "food freedom" laws, which broadly allow cottage food producers to prepare and sell almost any food or beverage within the state without being subject to food safety inspection or licensing. And finally, although not technically a policymaking tool, some advocates have successfully challenged restrictive state cottage food laws in court, resulting in the state allowing more cottage food sales if those advocates succeed. Many states mix and match within these strategies, each of which is discussed in more detail below, to create a cottage food law system. The end result is not only a variety of strategies used to create cottage food laws, but also policies that diverge quite widely from state to state. This section addresses the ways in which the laws are created, and the next section describes the common variations in what the laws allow and require.

AMENDING THE DEFINITION OF "FOOD ESTABLISHMENT"

Many states have amended the definition of "food establishment" in their food safety laws to allow

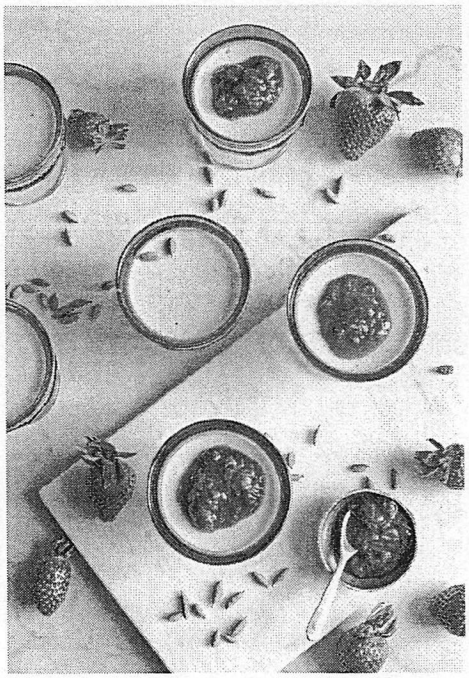
for cottage food operations. Commonly, states do so by creating an exemption that allows for certain foods produced in home kitchens to be sold at venues beyond the charitable bake sales allowed in the FDA Food Code. For example, Nebraska adopted the 2013 FDA Food Code[19] and modified the definition of "food establishment" to exempt non-TCS foods produced in home kitchens and sold directly to the consumer at farmers markets or similar functions.[20] Nebraska's definition of "food establishment" now exempts (change from FDA Food Code indicated in italics):

> A private home or other area where food that is not time/temperature control for safety food is prepared: (a) For sale or service at a religious, charitable, or fraternal organization's bake sale or similar function; or *(b) for sale directly to the consumer at a farmers market if the consumer is informed by a clearly visible placard at the sale location that the food was prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority*[.][21]

States can customize an exemption to allow the type of cottage food operations they want to foster. For example, one of the categories of cottage food production in Vermont, home bakeries, was created as an exemption to the food establishment requirements. Vermont exempts "an individual manufacturing and selling bakery products from his or her own home kitchen whose average gross retail sales do not exceed $125.00 per week" from the definition of "food establishment."[22]

As seen in these examples, states can legalize cottage foods in a variety of ways by exempting certain homemade food operations from the stringent requirements for "food establishments." For many states, this is the most commonsense approach to creating a cottage food law, and state legislatures might prefer amending existing laws rather than creating new standalone laws. That said, amending the existing law might make it more difficult for cottage food producers to understand how the law applies to them. Therefore, some jurisdictions have enacted standalone cottage food laws instead or in conjunction with changes to the food establishment definition, in order to establish clearer parameters for cottage food producers.

ENACTING STANDALONE COTTAGE FOOD LEGISLATION



Instead of amending the definition of "food establishment" in the state food code, a state can enact a standalone law on cottage food operations through legislation, regulations, or a combination of both (regulations are discussed below). Standalone cottage food legislation consolidates all laws pertaining to cottage food operations in one place. For example, Colorado's Cottage Food Act exempts cottage food operations from the Colorado Food Protection Act when the cottage food producer makes certain non-potentially hazardous foods.[23] Standalone cottage food policies can be particularly convenient for cottage food producers because they tend to be a clear, one-stop-shop to learn what rules apply to cottage food production in the state.

In states that allow cottage food production through standalone legislation, it is common for the legislature to act to allow cottage foods generally, but then direct a state agency to determine the details of the law through regulations. For example, Maryland's cottage food law, passed by the state legislature in 2012, directs the Department of Health to adopt regulations to carry out the requirements of the legislation.[24] Maryland's legislation generally

releases cottage food businesses from state licensing requirements and sets labeling requirements for cottage foods, but gives the Department of Health authority to issue regulations providing more specific information.[25]

Because legislators address a broad range of goals including economic development, they can be particularly responsive to constituents' calls for cottage food sales. However, the legislature often lacks the specific expertise to craft a detailed cottage food regime. So, states often turn to regulation, either alongside legislation or own its own, to create a cottage food system.

CREATING REGULATIONS ON COTTAGE FOOD

In some states, state agencies such as the state Department of Health or Department of Agriculture create regulations that govern cottage food production and sale. As discussed above, states like Maryland use legislation to direct a state agency to regulate cottage foods.[26] In these states, the legislation and the regulation together control cottage food production.

In some states, state agencies have created cottage food laws entirely through regulations, without the state legislature passing a new statute. For example, Georgia's cottage food law is contained wholly within the state Department of Agriculture regulations.[27] Georgia's regulations allow cottage food producers to sell any non-potentially hazardous food directly to consumers once they register and obtain a license from the Department of Agriculture's Food Safety Division.[28] To determine whether the state Department of Agriculture or Department of Health should develop regulations in a specific state, one should determine which agency has primary food safety authority, keeping in mind that in some states, that authority is divided between the two agencies.

Regulatory agencies generally have the expertise in food safety and health inspections that is required to create a cottage food regime. However, enacting cottage food laws solely through regulation can be more challenging than enacting laws through legislation. Regulatory agencies tend to focus narrowly on food safety and may be less responsive than legislators to economic development arguments. Given the challenges and drawbacks of addressing cottage food in each branch of government, a joint system where the legislature defines the broad parameters of a cottage food system and delegates the detailed food safety requirements and training or guidance functions to the agency, can create cottage food laws that are both responsive to public demand and based in sound food safety science.

PROVIDING GUIDANCE ON STATE AGENCY WEBSITES

In at least one state, North Carolina, despite the lack of legislation or regulations legalizing cottage food sales in the state, the North Carolina Department of Agriculture & Consumer Services provides detailed guidance on its website for home-based food producers operating in the state.[29] The agency requires that producers apply for a permit and it conducts a home inspection before permitting a producer to sell its products. Although an agency website might be a fast way to promote the state's cottage food industry, it is not an ideal structure since without any formal laws or regulations the agency could change its mind at any time and modify or take down the website that cottage food producers are relying on for guidance.

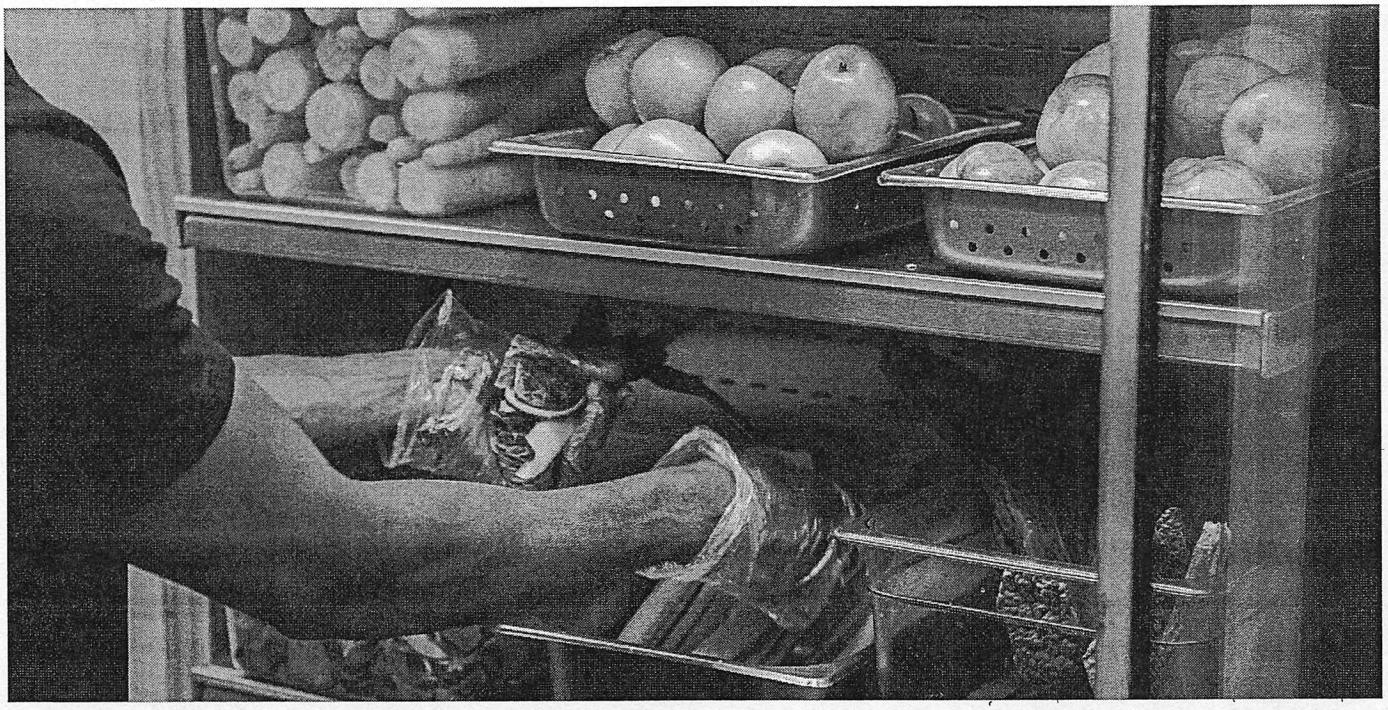
ENACTING FOOD FREEDOM LAWS

Although cottage food laws open up options for home-based food operations, most state laws have still maintained some constraints, such as the types of products permitted, the locations where the products can be sold, and the amount of revenue that can be generated by cottage food operations.

However, a growing number of states are considering or passing "food freedom" laws, which provide broad exemptions from food safety regulations to food producers in the state when they sell directly to willing customers.

Wyoming's Food Freedom Act, passed in 2015, exempted producers of "any product which may be consumed as food or drink," with the exception of some animal products, from all licensing, permitting, certification, packaging or labeling regulations when the food was sold directly to an informed end consumer at a farmers market or through sales out of the producer's ranch, farm, or home.[30] In 2017, Wyoming amended its food freedom law by expanding the types of animal products that could be sold under the law to include fish and rabbit.[31]

Wyoming's law is a model for the food freedom approach. It does not distinguish between low-risk and high-risk food products, instead allowing a broad range of products, including some animal products, to be sold without licensure.[32] The law does not put a cap on revenue, and does not require any labeling of the product.[33] Food freedom is still limited, however, as to how it may be sold. Sales must be made directly to an "informed end consumer," meaning that the producer must disclose to the purchaser that the operation has not undergone food safety inspections or certification.[34] Furthermore, the law restricts cottage foods to home consumption only, this means, for example, that it would not allow for the sale of a wedding cake to be served at a reception hall.[35]



Other states have continued to consider and pass food freedom bills; however, these laws vary in form. North Dakota's new food freedom law, passed in 2017, was modeled after Wyoming's law.[36] North Dakota's law mimics many of the elements of the Wyoming law, including the requirement that sales be made to an informed end consumer for home consumption.[37] However, although the North Dakota law allows a broader range of food products than many cottage food laws, it is more restrictive than Wyoming's law in terms of the products allowed. North Dakota's Department of Agriculture has issued interim guidance on the new law that prohibits most TCS foods.[38] Illinois also passed a cottage food law that was billed as a food freedom law in 2017.[39] Like Wyoming's and North Dakota's laws, the Illinois law broadly allows food production and then lists exceptions that are not allowed; however, the exceptions in the Illinois law are extensive.[40] Furthermore, Illinois' law includes

more typical cottage food restrictions on sales venues and adopts typical labeling requirements, rather than following the Wyoming model of allowing any direct sales to informed end consumers for home consumption.[41]

Maine's legislation, "An Act To Recognize Local Control Regarding Food Systems," took a slightly different tactic. The law authorizes cities and towns to develop their own food safety ordinances for any food producers engaged in direct-to-consumer sales at the point of production within the city or town.[42] Because the state law would even allow local ordinances to exempt meat sales, which is not allowed under federal law, the U.S. Department of Agriculture (USDA) reacted to this legislation with a letter threatening to strip the state of its slaughter inspection authority, citing concerns that the legislation would lead to violations of USDA slaughterhouse regulations.[43] To appease the federal government, the state amended the legislation to require city and town ordinances related to meat and poultry product inspection and licensing to comply with state and federal food safety laws and regulations.[44] However, the general law allowing local governments to broadly exempt food producers from food safety regulations has remained in effect.

TAKING COTTAGE FOOD RESTRICTIONS TO COURT

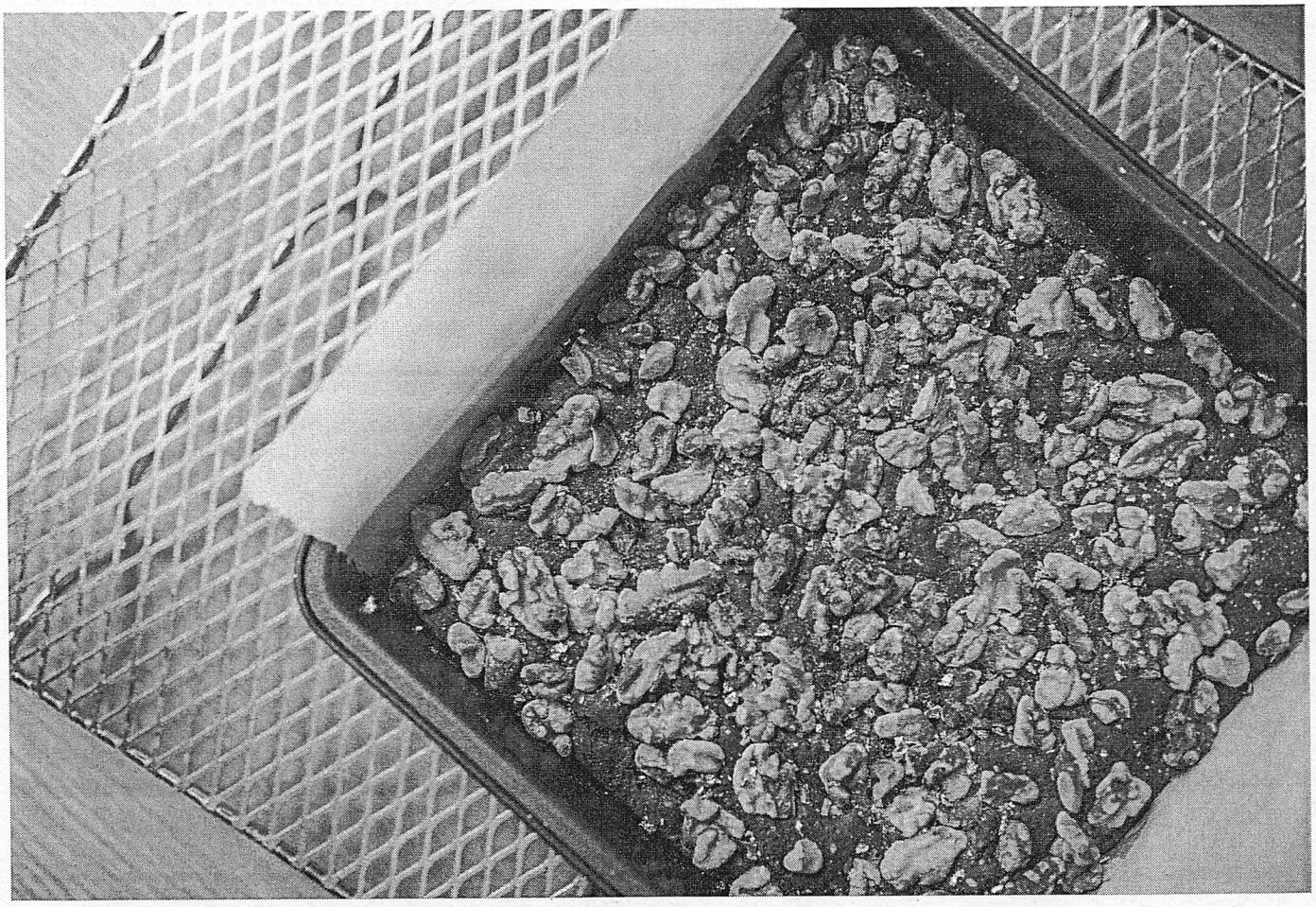
In several states where lawmakers have not legalized cottage food operations, or only legalized a narrow set of operations, cottage food producers have filed lawsuits against the state to challenge these restrictions. For example, in November 2013, two home bakers filed a lawsuit against the state of Minnesota for its restrictive cottage food law, which capped annual gross sales at $5,000.[45] The plaintiffs argued that this cap was unconstitutional. In June 2015, after the state court of appeals ordered the district court to review the case again,[46] the state legislature passed a law amending its cottage food law to allow producers to make up to $18,000 in annual gross sales, so long as the producers complete an approved food safety course prior to registration.[47] Given this expansion in the state's law, the plaintiffs dropped their lawsuit.[48]

In May 2017, cottage producers of baked goods in Wisconsin succeeded in a lawsuit challenging the state's omission of non-potentially hazardous baked goods from its cottage food law. In the ruling, the judge found that the state law violated substantive due process and equal protection guarantees, stating, that the provisions are not "rationally related to public health, safety, morals or general welfare..."[49] In a subsequent decision in October 2017, the judge clarified that all cottage food producers of non-hazardous baked goods could sell their goods directly to consumers irrespective of whether the state legislature enacted a law codifying the judge's order.[50]

In December 2017, the New Jersey Home Bakers Association filed a lawsuit against the New Jersey Department of Health for only allowing home food producers to sell at religious and charity bake sales.[51] New Jersey is the last remaining state that does not allow any cottage food sales outside of religious or charitable events. In January 2018, at the beginning of the subsequent legislative session, legislation was introduced that would allow for cottage foods to be sold directly to consumers and, if the operation undergoes additional inspection, through indirect sales by a third-party retailer.[52]

In the most recent lawsuit to challenge restrictive cottage food laws, small-scale farmers seeking to produce and sell pickled beets in Texas filed a lawsuit in May 2018 challenging the state's narrow definition of a "pickle."[53] Although Texas's statute allows the sale of "pickles" as cottage foods,[54] regulations implementing the law from the Texas Department of State Health Services specify that "pickle" refers only to "[a] cucumber preserved in vinegar, brine, or similar solution, and excluding all other pickled vegetables."[55] This case will likely be decided later in 2018. These lawsuits illustrate the power of litigation to motivate state legislatures to create or expand cottage food laws.

COMMON ELEMENTS OF STATE COTTAGE FOOD LAWS



Although state cottage food laws vary widely, there are several common elements found in many of these laws. These include provisions outlining: (1) the types of cottage food products allowed; (2) where cottage food products can be sold; (3) required registration, licenses, and/or permits for cottage food operators; (4) how much revenue a cottage food producer can generate before they must move to a commercial facility; (5) required labeling for products produced in a cottage food operation; and (6) tiers or types of cottage food producers, in states that have different rules for different food items or types of cottage food producers. Even within these elements, states vary widely in terms of their rules. Each of these elements and the common variations will be discussed in this section. For a more detailed description of each state's law, consult the Appendix.

TYPES OF COTTAGE FOOD PRODUCTS ALLOWED

States generally limit cottage food production to foods with a low risk of causing foodborne illness, also known as non-TCS foods. Some states simply require the food to be "non-potentially hazardous," (as "potentially hazardous" food was the former name given to TCS food in the FDA Food Code)[56] whereas others provide a detailed list of permissible foods. Utah's cottage food law, for example, simply stipulates that cottage foods cannot be potentially hazardous, without limiting producers

to a specific list of allowed cottage food products.[57] New Mexico, however, explicitly lists the food products permitted, including jams/jellies, baked goods, candy/fudge, and several other products.[58] California's cottage food legislation stipulates only that the food must be non-potentially hazardous, but directs the state Department of Health to enumerate a list of specific allowed foods and post the list on its website.[59]

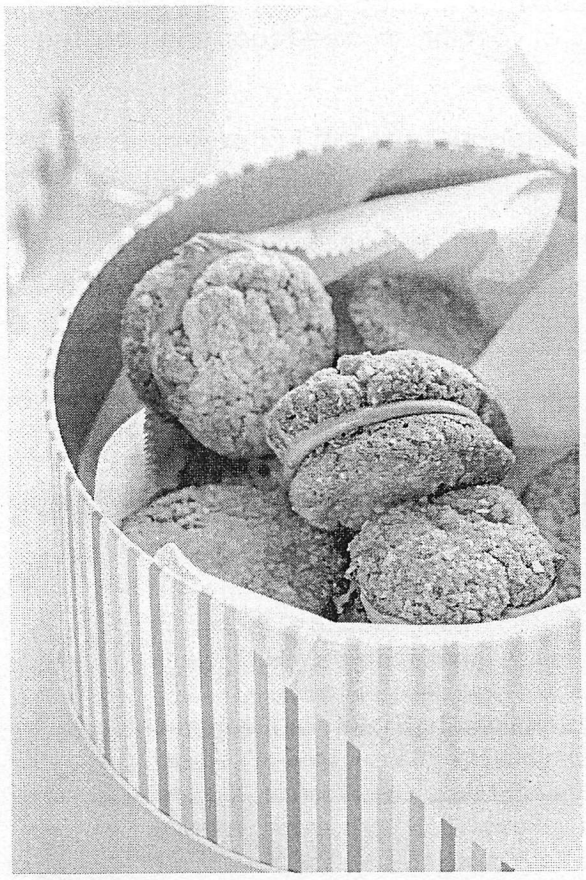
In some states, the list of allowable products includes broad categories of foods. For example, North Carolina permits baked goods, jams and jellies, candies, dried mixes, spices, shelf-stable sauces and liquids, pickles, and acidified foods.[60] Other states only allow for a few narrow categories of foods. For example, in Oklahoma, a cottage food producer can only sell baked goods that do not contain meat products or fresh fruit.[61] Although providing a specific list of permissible foods can take the guesswork out of the cottage food business, it is also necessarily restrictive, so advocates and policymakers should weigh these considerations when crafting a law.

FIGURE 1. TYPES OF COTTAGE FOOD PRODUCTS ALLOWED[1]

Allowed Foods Not Limited to a List	**E.g., "non-potentially hazardous foods" or "non-potentially hazardous foods, including, but not limited to . . ." or "non-potentially hazardous foods, excluding . . ."**	Alabama (home processed products), Alaska, Colorado, Connecticut (cottage food),[2] Delaware (cottage food), Florida, Georgia, Hawaii, Idaho, Illinois (cottage food), Indiana, Iowa (cottage food), Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, North Carolina, North Dakota, Oregon (domestic kitchen), Pennsylvania, Rhode Island,[3] Tennessee, Utah, Vermont (home caterer, exempt food processor), West Virginia, Wyoming
Allowed Foods Limited to a List	**E.g., "foods are limited to the following [categories or items]: . . ."**	Alabama (cottage food), Arizona, Arkansas, California, Connecticut (residential farmers),[3] Delaware (on-farm home processing),[3] District of Columbia, Illinois (home kitchen), Iowa (home bakery), Kansas, Kentucky,[3] Louisiana, Maryland, Missouri, Montana, Nevada, New Hampshire, New Mexico, New York, Ohio, Oklahoma, Oregon (cottage food, farm direct[3]), South Carolina, South Dakota, Texas, Vermont (home bakery), Virginia, Washington, Wisconsin
Does Not Allow Cottage Foods		New Jersey

1. Several states allow different types of operations to produce different varieties of products. For such states, the operations that fall within each category are indicated in parentheses.
2. Connecticut's cottage food law goes into effect Oct. 1, 2018.
3. In Kentucky and Rhode Island, only farmers may sell cottage food products. Connecticut, Delaware, and Oregon have a tier of cottage food production that is available only to farmers.

LIMITS ON WHERE COTTAGE FOOD PRODUCTS CAN BE SOLD



In addition to limiting the types of allowed cottage foods, most states also define the venues where cottage food products can be sold. Most states require cottage foods to be sold directly to consumers and do not permit sales to restaurants, grocery stores, or other retail food establishments. Some state laws list specific venues where cottage food can be sold, such as farmers markets, county fairs, roadside stands, and on the producer's premises. Minnesota, for example, permits cottage food to be sold only directly to the ultimate consumer at the producer's home, farmers markets, community events, or through donation to a community event with the purpose of fund-raising for an individual, or an educational, charitable, or religious organization.[62] Other states, like Virginia, further limit cottage food sales to just the producer's home or at a farmers market.[63]

Twelve states allow cottage foods to be sold indirectly, such as at retail stores or restaurants, at least in certain circumstances. These states generally include additional requirements to protect the consumer. For example, Ohio allows cottage food products to be sold to both grocery stores and restaurants without requiring any additional licensure, but stipulates that food products are subject to food sampling conducted by the state.[64] In New Hampshire, "homestead food operations" (their term for cottage food operators) can sell to "restaurants or other retail food establishments, over the Internet, by mail order, or to wholesalers, brokers, or other food distributors who will resell the product", so long as they obtain a license from the New Hampshire Department of Health and Human Services.[65]

Some state laws create tiers of cottage foods, allowing some tiers to be sold in a broader array of venues. For example, in California, the law distinguishes between Class A Cottage Food Operations, which can only sell directly to consumers, and Class B Cottage Food Operations, which can sell indirectly in counties that permit indirect sales. Class B Operations must get a permit from the county in which they are operating in order to make indirect sales and must be open to a discretionary inspection by the local health agency.[66]

Finally, a few state laws address Internet sales. In some states, like Florida, the cottage food producer can sell the product online, but still must deliver it to the customer in person.[67] In other states, like Georgia, the cottage food producer can sell the product online as long as the customer is within the state.[68] In 2017, Arkansas amended its cottage food law to allow for sales at online farmers markets in addition to physical farmers markets.[69] Some states, such as Maryland, explicitly prohibit online sales.[70] If a state law does not mention online sales, it does not mean that these types of sales are illegal. Cottage food producers should consult the relevant state agency to determine whether online sales are permissible under the state law.

FIGURE 2. WHERE COTTAGE FOOD PRODUCTS CAN BE SOLD[1]

Allows Both Indirect and Direct Sales (including restaurants, retail, wholesale, etc.)	Arizona, California (Class B), Iowa (home bakery), Louisiana (excluding baked goods), Maine, New Hampshire (licensed), New York, North Carolina, Ohio, Oregon (domestic kitchen), Pennsylvania, Vermont (home caterer, exempt food processor)
Allows for All Direct-to-Consumer Sales	Alabama (cottage food), Alaska, Colorado, Georgia, Hawaii, Idaho, Illinois (home kitchen), Kansas, Kentucky, Louisiana (baked goods), Massachusetts, Michigan, Mississippi, Missouri, Montana, New Mexico, North Dakota,2 Oregon (cottage food, farm direct), Tennessee, Utah, Vermont (home bakery), Washington, Wyoming (food freedom)[2]
Allows for Direct-to-Consumer Sales Only at Limited Venues	Alabama (home processed products), Arkansas, California (Class A), Connecticut, Delaware, District of Columbia, Florida, Illinois (cottage food), Indiana, Iowa (cottage food), Maryland, Minnesota, Nebraska, Nevada, New Hampshire (exempt), Oklahoma, Rhode Island, South Carolina, South Dakota, Texas, Virginia, West Virginia, Wisconsin, Wyoming (cottage food)

1. Several states allow different types of operations to sell products in different settings. For such states, the operations that fall within each category are indicated in parentheses.
2. Food freedom laws in North Dakota and Wyoming require that the product be for home consumption only.

REQUIRED REGISTRATION, LICENSES, INSPECTIONS, AND/OR PERMITS

States vary widely as to whether they require a cottage food producer to have a permit or the operation itself to be licensed, as well as the requirements for such authorization. Twenty-eight states do not require any licensing or permits for at least some types of cottage food producers or products. For example, Florida, Maryland, and Michigan explicitly do not require licenses for cottage food operations.[71] Some states require that the producer obtain food safety training or a similar training to get a permit. For example, Colorado requires a certificate in safe food handling and processing;[72] Washington requires a food and beverage service worker's permit;[73] and Utah requires a valid food handler's permit.[74]

In other states, the operation itself must be registered, licensed, or permitted. For example, the District of Columbia requires that cottage food operations register with the Department of Health, which will inspect the operation before providing a permit to sell its products,[75] and Georgia requires that the operation register and receive a license from the state Department of Agriculture, which has the discretion to inspect the operation before issuing a license.[76] Nine states and the District of Columbia require both the operator to complete food safety training and the operation to be registered, at least for some types of cottage food production. For example, New Mexico's cottage food law requires that the operator obtain a permit from the New Mexico Environment Department and attend an approved food safety course within five years of applying for the permit.[77]

States often impose fees associated with licensing and permitting. Some states have low fees ($20 fee in Maine),[78] whereas others have several different fees associated with the varying permits required. In Washington, for example, there is a $125 inspection fee, a $75 public health review fee, and a $30 processing fee.[79]

FIGURE 3. REQUIRED REGISTRATION, LICENSES, AND/OR PERMITS[1]

Requires Both (1) Food Safety or Food Handler Course for Operator And (2) Registration, Permit, or License for Premises	California, Connecticut (cottage food),[2] Delaware, District of Columbia, Georgia, Illinois (cottage food), Kentucky (home-based microprocessors), Minnesota, New Mexico, Utah
Requires Food Safety or Food Handler Course for Operator	Alabama (cottage food), Colorado, Connecticut (residential farmer), Hawaii, Oregon (cottage food), Texas
Requires Registration, Permit, or License for Premises	Arizona, Iowa (home bakery), Kentucky (home-based processors), Maine, Massachusetts, Montana, Nevada, New Hampshire (licensed), New York, North Carolina, Ohio (home bakery), Oregon (domestic kitchen), Pennsylvania, Rhode Island, Vermont (home bakery),[3] home caterer), Washington, West Virginia (canned acidified foods only)
No Registration, Permit, License, or Food Safety Course Required	Alabama (home processed products), Alaska, Arkansas, Florida, Idaho, Illinois (home kitchen), Indiana, Iowa (cottage food), Kansas, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nebraska, New Hampshire (exempt), North Dakota, Ohio (cottage food), Oklahoma, Oregon (farm direct), South Carolina, South Dakota, Tennessee, Vermont (exempt food processor), Virginia, West Virginia (excluding canned acidified foods), Wisconsin, Wyoming

1. Several states require different operations to obtain different types of registration, licensing, and permits. For such states, the operations that fall within each category are indicated in parentheses.
2. Connecticut's cottage food law goes into effect Oct. 1, 2018.
3. Home bakers in Vermont who make less than $125 per week are exempted from licensing and inspection requirements.

LIMITS ON TOTAL SALES

About half of the states place a limitation on the amount of income a cottage food operation can earn in a year. In those states, once a cottage food operation exceeds the cap, typical food establishment requirements and permitting rules kick in. Sales limits vary significantly by state. In South Carolina, a cottage food producer cannot make more than $15,000 in annual gross sales.[80] In contrast, other states like Texas limit the sale of cottage foods to $50,000 per year.[81] Colorado sets a $10,000/year sales limit for each eligible food item, but a cottage food producer may have multiple eligible food items (i.e. different flavors of jam), which allows producers to earn more total revenue.[82] And more than half of states, including Georgia, Massachusetts, New York, North Carolina, and Tennessee, do not place a sales limit on cottage food operations or have no limit on at least some types of cottage food operations.

A few state laws provide a gradual increase in the annual limit over several years. For example, in Michigan, until 2017, cottage food operations were capped at $20,000 in sales; after 2017, Michigan cottage food operators can make up to $25,000.[83] This higher limit is still more than $26,000 below

the median household income for the state, making it difficult for cottage food producers to make a living off of their food products.[84]

In other states, the annual sales cap varies depending on the sales venue, product, or other factors. For example, South Dakota has no annual sales cap on baked or canned goods sold at farmers markets or roadside stands but has a $5,000 annual sales cap for baked goods sold out of the producer's primary residence.[85] In contrast, Virginia has no annual limit for most types of cottage food products but has a $3,000 annual sales cap for acidified products.[86]

In other states, the operator must obtain more training or a license if they exceed a certain amount of revenue. For example, in Minnesota, cottage food operators that make between $5,000-$18,000/year must complete an in-person food safety training, but those that make under $5,000 only have to complete an online training.[87] In New Hampshire, cottage food producers that make over $20,000 annually must obtain a license from the New Hampshire Department of Health and Human Services.[88]

Sales limits are likely appealing to state policymakers because they limit the scale of operations that are allowed to sell without full food safety precautions in place. If there is a foodborne illness outbreak from one of the cottage food operations, a sales cap also limits the potential harm from the outbreak by limiting the total sales. That said, sales limits also prevent cottage food operators from scaling up and generating a livable income from their business, particularly if the sales limit is very low. Advocates and policymakers should consider the unique landscape of their cottage food industry when deciding whether to impose a sales limit.

FIGURE 4. LIMITS ON SALES[1]

$10,000 or less	Colorado (each product or flavor), South Dakota (baked goods sold out of producer's home only), Vermont (exempt food processors), Virginia (acidified products and pickles only), Wisconsin (pickles)
$10,001-$30,000	Alabama (cottage food), Alaska, Connecticut (cottage food),[2] Delaware (cottage food), District of Columbia, Illinois (home kitchen), Louisiana, Maryland, Michigan, Minnesota, Mississippi, New Hampshire (exempt), Oklahoma, Oregon (cottage food, farm direct), South Carolina, Washington
$30,001-$50,000	California, Delaware (on-farm home processing), Florida, Iowa (home bakery), Kentucky (home-based microprocessors), Missouri, Nevada, Texas
No Sales Limit	Alabama (home processed products), Arizona, Arkansas, Connecticut (residential farmers), Georgia, Hawaii, Idaho, Illinois (cottage food), Indiana, Iowa (cottage food), Kansas, Kentucky (home-based processors), Maine, Massachusetts, Montana, Nebraska, New Hampshire (licensed), New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon (domestic kitchen), Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont (home bakery; home caterer), Virginia, West Virginia, Wisconsin (baked goods; by court decision),[3] Wyoming

1. Several states have different sales limits for different types of operations. For such states, the operations that fall within each category are indicated in parentheses.
2. Connecticut's cottage food law goes into effect Oct. 1, 2018.
3. Although Wisconsin's cottage food legislation does not address baked goods, a court ruling on October 2, 2017 clarified that home bakers may sell low-risk baked goods and that there can be no sales limit for baked goods.

REQUIRED LABELING

Almost all states with cottage food laws have some sort of labeling requirement. Generally, cottage food products must be labeled with some combination of the following "typical" label information:

- Name and address of producer
- Common or usual name of product
- Ingredients of product
- Food allergens
- Net weight or net volume of food product
- Date on which the food was processed
- A statement similar to the following: "Made in a home kitchen that has not been inspected by the [state] department of health (or department of agriculture)."

Although the above labeling elements are typical, state laws still vary widely. Maryland, for example, requires all of the above information plus, if any nutritional claim is made, nutritional information as specified by federal labeling requirements.[89] Virginia, as well as several other states, require the cottage food label to include the name, address, and telephone number of the person preparing the food product, the date the food product was processed, and the following disclaimer on the principal display panel: "NOT FOR RESALE -- PROCESSED AND PREPARED WITHOUT STATE INSPECTION."[90] Wyoming, at the far end of the spectrum, has no labeling requirements at all under its food freedom law; however, the end consumer must be informed that the product is not licensed, regulated or inspected.[91]

FIGURE 5. REQUIRED LABELING[1]

Typical Labeling Requirements	Arizona, Arkansas, California, Colorado, Connecticut (cottage food),[2] Delaware, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa (home bakery), Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming (cottage food)
Limited Labeling Requirements – Contact Information and/or Disclaimer Only	Alabama, Alaska, Connecticut (residential farmers), Idaho, Iowa (cottage food), Louisiana, Nebraska, North Dakota, Oklahoma, Virginia
No Labeling Requirements	Wyoming (food freedom)

1. Several states have different labeling requirements for different types of operations. For such states, the operations that fall within each category are indicated in parentheses.
2. Connecticut's cottage food law goes into effect Oct. 1, 2018.

STATES WITH DIFFERENT TIERS OF ALLOWED COTTAGE FOOD PRODUCTION

Thirteen states have established several categories, or tiers, of cottage foods operators that are treated differently under the law. Some states, such as California,[92] have created a tiered system using comprehensive legislation, whereas others, such as Delaware,[93] have developed a tiered system by enacting separate laws over time that each address different types of cottage food production and put in place different requirements and limitations on those different types of food. In either case, the result is that different restrictions or opportunities may apply depending on who the food producer is, what type of foods are produced, where the foods are sold, or other factors.

As described above, California distinguishes between Class A Cottage Food Operations, which can only sell directly to consumers, and Class B Cottage Food Operations, which can sell indirectly in counties that permit indirect sales. Class B Operations must get a permit from the county in which they are operating in order to make indirect sales and must be open to a discretionary inspection by the local health agency.[94] A bill being considered in the California legislature in 2018 would create a third tier for "Microenterprise Home Kitchen Operations," which would allow home cooks to sell almost any type of prepared food from their home kitchens without being subject to the same requirements as commercial kitchens.[95] The bill would limit microenterprise home kitchen operations to no more than one full-time equivalent food employee and $50,000 in annual sales. [96]

In Illinois, "cottage food operations" and "home kitchen operations" are treated differently under state law.[97] These two laws were enacted and amended at different times to regulate different types of home food production.[98] Cottage food operators can sell any food or drink not containing hazardous ingredients, whereas home kitchen operators can only sell baked goods.[99] Cottage food operators have no sales limit; home kitchen operators are limited to gross monthly sales of $1,000 or less.[100] Cottage food operators must register with the local department of health and get a food safety certificate, whereas home kitchen operators are not required to get any registration or permit.[101]

Developing a tiered system for cottage foods has the advantage of creating separate tracks that accommodate a variety of cottage food operators. Although some operators might be happy to keep their business small if it means they can avoid regulatory barriers, others might be willing to jump over some additional hurdles, such as completing a food safety course and registering with the state if it means they can sell more products at more venues and generate more revenue. The downside of a tiered system is that it is harder for operators to navigate and might lead to some operators inadvertently not following the law, especially if the tiers were enacted under different laws or are unclear. It could also create disincentives for operators to grow their businesses. Policymakers and advocates should consider the types of cottage food businesses they want to support in their states to determine whether a tiered system makes sense.

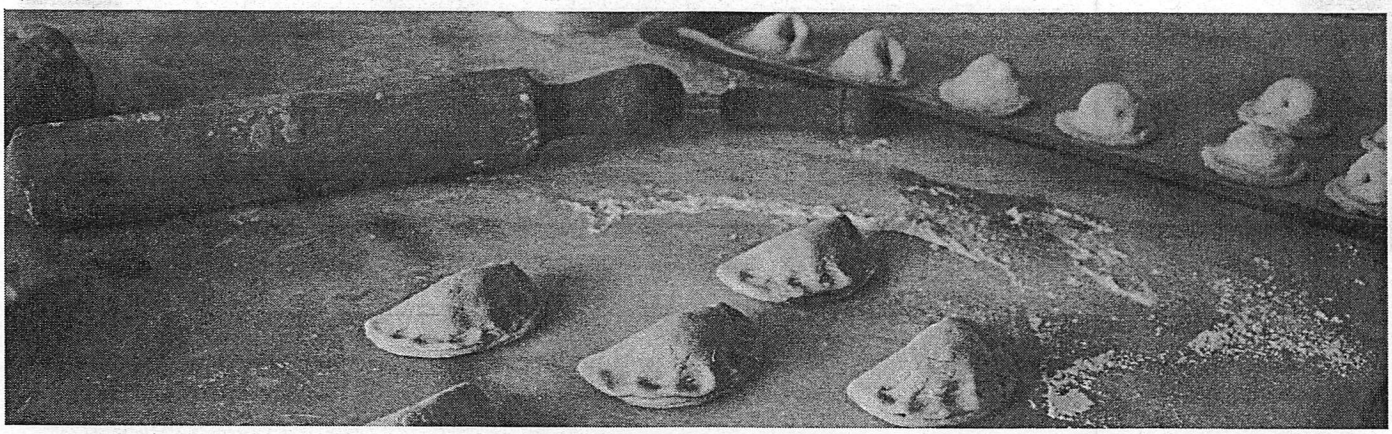


FIGURE 6. STATES WITH TIERED COTTAGE FOOD SYSTEMS

State	Tiers
Alabama	***Cottage Food:*** limited items; all direct to consumer sales ***Home Processed Products:*** broader items; certified farmers market sales only
California	***Class A Cottage Food:*** direct to consumer sales only ***Class B Cottage Food:*** indirect sales in certain counties
Connecticut	***Cottage Food:*** anyone producing low-risk items[1] ***Residential Farms:*** farmers producing jams and acidified canned food on-farm
Delaware	***Cottage Food:*** anyone producing low-risk items ***On-Farm Home Processing:*** farmers producing listed items on-farm
Illinois	***Cottage Food:*** variety of allowable foods ***Home Kitchen:*** baked goods only
Iowa	***Cottage Food:*** low-risk food items ***Home Bakery:*** bakery items including higher-risk items
Kentucky	***Home-Based Processors:*** farmers producing low-risk products ***Home-Based Microprocessors:*** farmers producing higher-risk products
New Hampshire	***Exempt Homestead Food Operation:*** sales cap; limited sales venues ***Licensed Homestead Food Operation:*** no sales cap; indirect and internet sales allowed
Ohio	***Cottage Food:*** listed low-risk foods ***Home Bakery:*** baked items including higher-risk items
Oregon	***Cottage Food:*** low risk baked goods and confectionary ***Domestic Kitchen:*** broad range of allowed foods ***Farm Direct:*** farmers processing acidified foods with ingredients from own production
Vermont	***Home Bakery:*** baked goods ***Home Caterer:*** prepackaged and on-demand food items ***Exempt Food Processor:*** jarred and packaged products
Wisconsin	***Baked Goods:*** baked goods allowed, according to court decision ***Pickles and Canned Goods:*** canned goods allowed, according to state legislation
Wyoming	***Food Freedom:*** all foods except some meat, poultry, and fish; foods must be sold to an informed end consumer for home consumption only ***Cottage Food:*** non-potentially hazardous foods; no limit on where food is consumed

1. Connecticut's cottage food law goes into effect Oct. 1, 2018.

RECOMMENDATIONS TO STRENGTHEN STATE COTTAGE FOOD LAWS

States continue to introduce new cottage food laws or amend their existing laws, which means there are numerous opportunities for advocates to get involved. In fact, a wide variety of new laws are being introduced, debated, and passed in several states. For instance, New Jersey, the only state to still not allow cottage food sales, had legislation moving through its state legislature as of 2018 that would legalize cottage foods.[102] Both Connecticut[103] and Delaware[104] recently eliminated long-standing restrictions on non-farmer cottage food sales, allowing any state resident to sell cottage foods for the first time. In the 2018 legislative session, Nebraska also considered but ultimately failed to pass a bill that would allow cottage food producers to sell products from their premises in addition to selling at farmers markets and bake sales, the only venues allowed under the current law.[105] Litigation underway in Texas and New Jersey has the potential to force change in those states' approaches to cottage food.[106]

States with restrictive cottage food laws should consider expanding these laws based on the examples of other states. For example, Kentucky and Rhode Island still limit cottage food production to only farmers processing on-farm; these states could follow the examples of Connecticut and Delaware and expand access to cottage food business opportunities to all. Furthermore, it seems that many early cottage food laws were passed with the intention of only allowing home-based food businesses to be a side business or hobby. With the increased focus in many state legislatures on supporting local economies, locally produced food products, and the sharing economy, many states are expanding cottage food laws and raising their income caps to allow producers to make their operations viable businesses. This section discusses the number of ways states can improve upon their cottage food laws.

STATE AGENCIES SHOULD CREATE EASY-TO-FOLLOW GUIDANCE FOR POTENTIAL COTTAGE FOOD OPERATORS AND REGULATORS.

When potential in-home producers are looking to start cottage food operations, they should be able to find the laws and regulations governing their businesses relatively easily, and they should be able to understand what is required of them. By having difficult-to-find cottage food laws or hidden exemptions from the requirements for food establishments, states may discourage cottage food operators from starting their business or may cause them to inadvertently break the law. This is especially true in states with different tiers of cottage foods controlled by different laws or regulations; in such states, it can be challenging for potential cottage food producers to determine which law applies to them. Cottage food laws were created as a way to allow entrepreneurship without high barriers to entry, so states should ensure operators can find the information they need without having to pay for legal counsel or other costly services to help them understand the state rules.

To help potential cottage food operators understand and comply with laws and regulations, states should ensure that relevant guidelines are easy to find on an official state website, such as the website for the state department of agriculture and/or state department of health. Several states already provide guidance documents for potential cottage food operators and health officials that offer models for other states. For example, Montana's Department of Public Health & Human Services provides a guidance document for cottage food operators that includes the requirements and registration forms to operate a cottage food business in the state.[107] Florida's Department of

Agriculture and Consumer Services provides a cottage food guide that provides information on the food items that may be sold and guidelines for selling cottage foods in the state.[108] Even if a state has a strong cottage food statute or regulations, it might be written in legal language not accessible to the average cottage food producers. Therefore, it is still advisable to create easily understandable and accessible guidance for cottage food producers and consider hosting regularly scheduled information sessions to explain this guidance and answer questions.

STATES SHOULD BROADEN THE TYPES OF FOODS THAT CAN BE SOLD.

Several states unnecessarily limit allowed products to only a few types of items, such as jams, jellies, baked goods and/or pickled items. Allowing for a broader list of foods would increase access to local products and provide producers with more options to make their operations viable businesses. States that are worried about food safety concerns associated with broadening the list of approved food could require food producers to complete state-approved food safety training for all or for some subset of allowed foods. For example, Texas allows a broad list of non-potentially hazardous foods to be produced and sold from a home kitchen but first requires cottage food producers to complete basic food safety training.[109]

Several state laws are good models for expansive lists of approved food items. For example, Alaska broadly allows all types of non-potentially hazardous foods to be produced and sold from a home kitchen.[110] California's Department of Health provides a detailed list of more than thirty non-potentially hazardous foods that are approved for cottage food operations on its website and allows producers to request that the Department of Health add additional foods to the approved list.[111] Wyoming's food freedom law allows all foods except certain meat and poultry products to be sold directly to the consumer.[112] Legislators and agencies should work with cottage food producers in their state to figure out what model works best.

STATES SHOULD ALLOW COTTAGE FOOD PRODUCERS TO SELL INDIRECTLY TO CONSUMERS AT RESTAURANTS AND RETAIL ESTABLISHMENTS.

Allowing indirect sales to restaurants and retail establishments allows cottage food producers to expand their businesses by boosting sales volume, amplifying brand exposure, and creating distribution partnerships. This can help cottage food operators more successfully transition to full food businesses over time. Concerns about food safety can be addressed by requiring clear disclosures on labels and signs and/or by creating a second tier of food safety requirements to be met in order for products to be sold indirectly. For example, California strikes a good balance between allowing indirect sales and maintaining oversight. In California, "Class A" food operations can only sell food directly to consumers, whereas "Class B" food operations can sell their products to third-party retailers such as restaurants and markets within the jurisdiction of their local health agency if appropriate permits are obtained from such counties and certain food safety and health requirements are followed.[113]

STATES SHOULD ELIMINATE SALES LIMITS OR SET HIGHER THRESHOLDS.

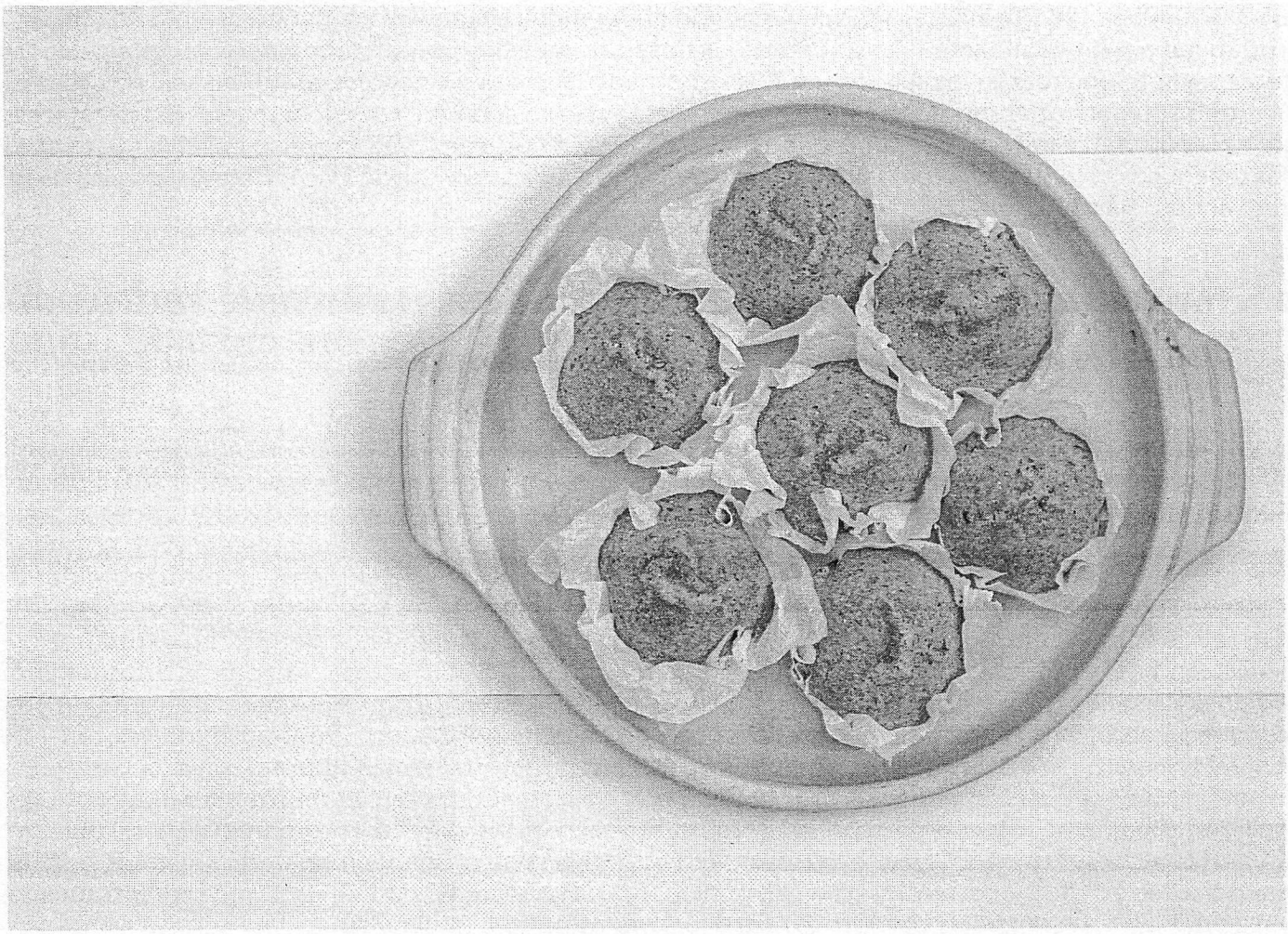
About half of the states set a sales limit on cottage food production ranging from $5,000 a year to $50,000 a year. If a business is strictly limited in how much revenue it can generate, that limits the producer's ability to make a living off the business or meet the potential demand for products. If states want to encourage local economic development, increasing or eliminating the sales threshold for cottage food operations is a necessary step toward accomplishing that goal. Some states, like Missouri and Florida, set high sales limits of $50,000 a year. Even more expansive, Georgia, Massachusetts, Montana, Nebraska, Pennsylvania, and more than half of other states do not have any annual sales limit.

IF STATES REQUIRE REGISTRATION, LICENSING, OR PERMITTING, FULFILLING THESE REQUIREMENTS SHOULD BE LOW-COST OR FREE FOR COTTAGE FOOD OPERATIONS.

Some states require complex or burdensome registration requirements that hinder the development of cottage food businesses. States with existing registration and permitting requirements for cottage food production should review these requirements to ensure they are not overly burdensome. State that have no registration or permitting requirements should consider implementing a simple free or low-cost registration system that captures basic contact and business information about cottage food producers but does not impose costs on producers. A state registry of cottage food operations can meet the goals of allowing for better program assessment and tracking of foodborne illness and help determine the size of the cottage food industry in the state. Arizona's cottage food business registry provides a good model. In Arizona, all cottage food producers are required to register free of charge for the Home Baked and Confectionery Goods Program by filling out an online form with the following information: name, phone number, email address, physical address, whether they have a food handler card/training certificate, and the types of products they plan on selling.[114] The name, county and type of product for each of the registrants are publicly available on the Arizona Department of Health Services website.[115] This type of simple registration system can be implemented at a low cost in any state, and can help track valuable data on cottage food producers while keeping the costs and barriers to entry for operators to a minimum.

CONCLUSION

Across the United States, farmers and food entrepreneurs are developing tasty, high-quality food products to sell in their communities. States can support these cottage food producers by crafting state laws with only the necessary restrictions on cottage food operations and providing cottage food producers with clear guidance on how to follow these laws. States that allow for cottage food operations are supporting local business development, creating jobs, and strengthening the local economy. Forty-nine states and the District of Columbia now allow for some cottage food production and sales, compared to forty-two states in 2013.[116] This increase demonstrates that more cottage food producers and consumers are demanding that sales of these safe, wholesome foods be allowed in their states. However, many of these state laws still restrict cottage food operations in ways that are unnecessary for protecting public health and safety. Using this guide as a resource, states should continue updating and strengthening their cottage food laws to encourage the growth of cottage food businesses in their states.



Testimony of the District of Columbia Building Industry Association

Before the

Committee of the Whole

Honorable Phil Mendelson, Chair

Public Oversight Hearing
on
The Department of Consumer and Regulatory Affairs: What Issues Should the Committee Pursue?

The John A. Wilson Building
1350 Pennsylvania Avenue, N.W. Room 123
Washington, D.C. 20004
February 6, 2019
11:00 am

Good morning Chairman Mendelson, members of the Committee, and staff. My name is Lisa Mallory, and I am Chief Executive Officer of the District of Columbia Building Industry Association ("DCBIA"). I am also a longtime resident of Ward 4. DCBIA is the leading voice of real estate development in the District of Columbia. Our more than 425 members comprise professionals involved in all areas of real estate development, including builders, developers, general contractors, subcontractors, engineers, brokers, attorneys, and other key real estate professionals. Thank you for the opportunity to testify on the Committee's oversight priorities for the D.C. Department of Consumer and Regulatory Affairs ("DCRA").

As you know, DCBIA members are major customers of DCRA with a direct stake in its effectiveness. Over the years, DCBIA has established a great working relationship with DCRA resulting in several joint partnerships, educational seminars, and highly technical training programs that have helped educate DCRA employees and the development industry on DCRA's various processes. This relationship extends to the present and current Director Ernest Chrappah. We are pleased to have been invited to participate in DCRA's new working group on regulatory reform, and we look forward to working collaboratively with the agency and other stakeholders in the coming months.

In my testimony today, I will outline three areas where this Committee should focus its oversight of DCRA, specifically regarding its construction-related functions: (1) technical competence and staffing, (2) accountability, (3) and customer service. I will identify specific actions in each of these areas that the Council and DCRA can take now as part of a long-term strategy toward improvement. DCBIA is happy to follow up with you on these recommendations.

1. Lasting Reform Will Require a Long-Term Effort.

I first want to give the Committee a high-level overview of considerations when looking to reform DCRA. The DCRA of today is a vast improvement from the DCRA of one or two decades ago. Nonetheless, it is still the case that consumers feel that DCRA is just there to say "no" instead of working with them to find a solution. DCRA's focus should be on how we can achieve what the consumer is trying to accomplish while ensuring proper oversight and inspection.

We applaud this Committee for its continued interest in improving DCRA. Committee staff met with DCBIA in advance of this hearing, and we were encouraged that the Committee plans to prioritize communication with Director Chrappah and conduct regular oversight hearings on various agency issues. This demonstrates that the Committee recognizes that lasting, meaningful reform at DCRA will not occur overnight. It will take time, money, and coordination. Although the Committee is again considering transferring some of DCRA's

functions to a new agency through the Department of Buildings Establishment Act, reform will not occur by one piece of legislation. As I testified on this bill last year, restructuring alone will not improve DCRA. The Council, DCRA, and the Mayor must first address the agency's many underlying issues.

As a start in that direction, I will provide some possible solutions under the three suggested oversight areas. Many of our suggestions overlap with concerns and ideas that this Committee is already discussing, and with Director Chrappah's "Vision 2020" initiative now underway within the agency.

2. Recommendations for Improving Technical Competence and Staffing

The first area where Committee should focus is ensuring that DCRA staff are trained in the many technical parts of the D.C. building code and related laws to ensure that they are equipped to make well-vetted and timely decisions. As you know, there is currently a lack of consistency in decision-making among staff. Staff often make two different decisions when reviewing similar projects, due in part to varying interpretations of the building code. Moreover, there is bottlenecking in the review process, which slows down projects and increases costs.

To address these problems, we recommend the following:

- DCRA should require in-house certification standards to empower staff and mid-level managers to make decisions that will be consistent across projects.

- DCRA should develop employee expertise by dividing line review employees between residential code and building code reviewers. This breakdown would focus employees on one type of project and assist them in garnering more technical expertise.
- Mid- and upper-level managers should receive cross-training to prevent slowdown in workflow. A different set of eyes can also help ensure mistakes or review lags are noticed and corrected.
- DCRA should be given the flexibility through the budget to adjust staffing in response to periods of increased workload. This could be done through new full-time, part-time, and/or contract employees. DCRA would also benefit from adding in-house counsel staff.
- The District should ensure that DCRA is able to attract a wide range of talent. Currently, individuals may be concerned that working at DCRA will limit future employment options. To address this, the District should consider reducing the length of restrictions on post-government-employment activities. It might also consider a public-private partnership where experts can participate in a three- to six-month peer-to-peer review program to assist DCRA with improving its review program.
- DCRA should retain a certain percentage of revenue from the Velocity program for quick staff additions in the event of inevitable workload

increases. The Velocity program has made the need for staffing flexibility even more apparent. If staff are focused on a project where a customer has paid for an accelerated review, then other projects for which no premium is being paid will necessarily be delayed.

- DCRA should ensure that it promptly reviews work that has already completed Third Party Program review. Since work has already been vetted by DCRA-certified professionals, review at the agency level should take less time.
- Finally, more time and effort must be spent on addressing the residential concerns that have been raised in recent years at hearings in this building and through the local media. DCRA should expand the Homeowner's Center and provide it dedicated staff to assist D.C. residents with their projects.

3. Recommendations for Improving Accountability

The Committee should also examine DCRA's accountability framework. The agency faces a lack of consistent, regularly reviewed and updated standard operating procedures for its units. To address these issues, we suggest the following:

- DCRA must create a standard operating procedure manual for each department that is available to both staff and property owners. These procedures must be regularly reviewed and updated and will ensure that

everyone is working off the same standards, especially with respect to plan review and inspection.

- DCRA's current communication matrix also hinders employee accountability. Accountability can be improved by creating a publicly available electronic phone list for all DCRA employees, so that property owners are able to reach the correct person to answer their questions.
- DCRA should establish performance measures to encourage agency accountability to property owners. If a project has not been moved in a certain number of days, a manager should conduct a review. Property owners must also be informed why any delay occurred and when a resolution is expected.
- Lastly, the D.C. Auditor, as an independent body, should issue annual reports for at least the next five years on DCRA's timeliness of permits, excluding postcard permits, and other performance metrics.

4. Recommendations for Improving Customer Service

Finally, we believe the Committee should focus on improving DCRA's customer service. We suggest the following changes in this area:

- DCRA must have the technological resources to communicate with other agencies on building permits. If agencies do not have enough reviewers to

cover the workload, the logjam intensifies, and the lack of acknowledgement to the applicant produces anxiety about the entire process.

- A DCRA ombudsman should be established to advocate for property owners and oversee the resolution of complaints.
- Additional staff positions should be created within Office of the Chief Technology Officer to revamp the technology used *by all agencies* for building permits to ensure it is useful for both staff and property owners and their designees.
- DCRA should also make its Acela and FileNet documents available to the public. Making these records readily accessible by the public will relieve DCRA staff, allowing them to work on new permits and certificates of occupancy instead of responding to research requests.
- Finally, we need to empower DCRA employees. They must be provided training, incentive bonuses, and clear reviews tied to raises. DCRA can work with the union to ensure employee accountability.

* * *

DCBIA's members remain committed to working with you, the Mayor, and DCRA on resolving the issues the agency faces so that the entire public can benefit. Thank you for convening today's hearing. I am available to answer any questions you may have.

DCRA OVERSIGHT HEARING, COMMITTEE OF THE WHOLE
February 6, 2019

BROOKE FALLON
INSTITUTE FOR JUSTICE

Although DC has many of the right elements for a healthy business environment, like a talented and passionate workforce, creative entrepreneurs in every sector, and government officials and nonprofits who see the need for change, the regulatory climate makes getting started expensive, confusing, and time consuming.

DC Council should work with the Department of Consumer and Regulatory Affairs (DCRA) and other agencies to enact reforms to reduce barriers for new and small business owners trying to earn a living doing what they love.

The Institute for Justice has spent considerable time combing through DCRA's regulations, interviewing local entrepreneurs, meeting with government officials and community stakeholders, and researching best practices for licensing in other jurisdictions. Each path has led to the same three themes: Navigating DC's licensing process is too expensive, too time consuming, and too complicated. These observations match research conducted by DC Government, as addressed in the Office of the Deputy Mayor for Planning and Economic Development's (DMPED) *DC Economic Strategy Plan* published in March 2017.[i]

Regulatory fees contribute hundreds, sometimes even thousands, of dollars to the cost of doing business. Entrepreneurs have difficulty understanding how to navigate and understand relevant rules and regulations. They report needing to make multiple trips to agencies to receive various licenses. Confusion and agency visits add up, costing business owners valuable time and money while waiting for paperwork and inspections. These fees and waits disproportionately hurt lower-income populations, like residents in Wards 7 and 8, who can't afford to hire lawyers and expeditors to help navigate the process. The cost and complexity of the licensing process in DC pushes entrepreneurs to explore opening up shop in Maryland or Virginia instead.

It is crucial that DC Council and agencies work together to bring major reforms to DCRA and its accompanying regulations. Our research shows that lowering regulatory startup fees and streamlining licensing can result in higher rates of local business formation and better relationships between business owners and agency representatives. DC Council should support reforms that will help make starting a business more accessible to all Washingtonians.

This testimony will address the following recommendations for reform:

1. Streamline the licensing process by removing or combining underused and redundant licenses and processes.
2. Lower licensing, registration, and permitting fees for new and small businesses.
3. Improve communication and transparency between regulatory agencies and business owners by creating a true "one-stop shop."[ii]
4. Reform requirements that create barriers for low income residents and returning citizens.
5. Review and reform home-based business regulations to ensure they allow entrepreneurs to start small businesses in their homes.

Reform #1: Streamline the licensing process by removing or combining underused and redundant licenses and processes

DC has too many license categories, and their definitions are too specific. This makes it difficult for business owners to determine which license(s) they need, and it is common for a business owner to need multiple licenses. DC should repeal licenses that are not being used, and combine licenses with similar requirements to avoid redundancy. DC Council and DCRA should also reduce the number of steps and paperwork entrepreneurs face when trying to navigate the overall licensing and registration process.

There are 128 BBL categories that are defined too narrowly and many are not being used [iii]

These 128 Basic Business License (BBL) categories—far more than cities of comparable size—do not include licenses that fall outside of the BBL process, like occupational licenses. Many license categories seem redundant, arbitrary, and/or unrelated to the health and safety of DC residents.

According to data on DCRA's website, **13% (17 of 128) of BBL categories have zero licensed businesses using that category. Additionally, 43% (55 of 128) of BBL categories have fewer than 20 licensed businesses.**[iv] Categories that are rarely used should be combined with similar license categories. The most expensive licenses are also some of the least commonly used categories. It is possible that the cost of those license types drive applicants to try to fit into more affordable BBL categories.

See Appendix A, Price per Business License by Category

Business activities are defined so narrowly that many business owners need to obtain multiple licenses and pay multiple sets of BBL fees, driving up the costs and time required for licensing. Examining food-related license categories helps demonstrate these issues. The definitions of some categories differ by only a few words, but the fees vary widely. It is also difficult for entrepreneurs to figure out which license(s) they need. DC Council should enact reforms to reduce the number of BBL categories.

See Appendix B, Food-related BBL Categories.

DC should follow the best practices of cities like Chicago, and reduce and streamline business licensing

In May of 2012, Chicago passed legislation to reduce the number of license types from 117 to 49, a reduction of 60%. Reducing the number of license categories saved Chicago's small businesses $2 million in license fees each year. In addition, fewer business owners were fined for technical violations like having the wrong license type. Over 6,000 businesses no longer required a general business license, and certain common business types no longer need multiple licenses to operate. Chicago also created an Emerging Business Permit for new business types that do not fit neatly into the existing licensing categories. DC's business community and agency personnel could benefit from these reforms.

As mentioned above, DMPED's *DC Economic Strategy Report* also recommends streamlining the licensing and permitting process, listing "redesign permitting and licensing systems" as their first reform initiative. According to this report:

> "Licensing improvements could include increasing the speed of processing individual licenses, reducing the number or types of activities for which licenses are required, exempting small businesses and startups from certain licensing requirements, and redesigning license processes from a customer-centric point of view. For instance, designing a common form could allow licensees to apply for multiple licenses at one time."

To address these issues, DC should enact reforms like Chicago's and reduce and streamline license categories and regulations.

Reform #2: Lowering licensing, registration, and permitting fees for new and small businesses

Starting even the most basic type of business in DC can cost thousands of dollars in regulatory fees[v]

Studies have shown that few Americans have access to the amount of money that it takes to become a licensed business in DC.[vi] Even for those who do, this is money that could otherwise be used to grow the business.

DC's excessive licensing costs endanger young businesses, forcing entrepreneurs to spend huge sums upfront without having a proven business model. DC requires all businesses to obtain a license and pay their fees before they've even made a dime, and before they know if their business is viable. And getting started is not the end of these fees. Most compliance fees must be paid every two years when paperwork must be renewed.

See Appendix C, Fees to Start a Business in DC

Business owners in the District pay an estimated $48 million annually for business licensing, occupational licensing, inspections, registration, and other regulatory requirements.[vii] The licensing process is long and complicated, and riddled with hidden costs.

See the District Works flowchart of the business licensing and registration process

Fees should be tied to the cost of enforcing and administering licenses

The vast differences between some category license fees seem arbitrary. DC Code requires that fees be "reasonably related to the cost to the District of investigating, inspecting, and issuing the licenses," but categories that would seem to require similar administration and enforcement costs can have very different fees.[viii] The cost of a business license should be tied to factors like the size and risk posed by the business.

Business owners in the District pay an estimated $12.5 million annually to DCRA to obtain or renew BBLs. It is unclear how some of this money is used. For instance, the technology fee portion of the BBL fee was established in 2010 to upgrade DCRA's outdated BBL platform and was intended to last three years. In 2013, it was made permanent, but it is still unclear which improvements that fee revenue has funded.[ix]

DCRA has not explained how the technology fee funds are being used to meet the original goal of the fee. The potential mismanagement of these funds should be of great concern to DC Council.

Even when there is a strong correlation between fee costs and regulatory costs, the overwhelming red tape that plagues the business licensing process is unnecessary and should be streamlined to drive down costs.

High fees hurt lower-income entrepreneurs most

Expensive fees for starting a business hurt the very entrepreneurs that everyone agrees we should be working harder to support: local and lower-income entrepreneurs, returning citizens, and communities in Wards 7 and 8. Research by the Urban Institute confirms that **Wards 7 and 8 have disproportionately fewer businesses than other parts of DC, particularly retail and food businesses.** This reality contributes to poverty levels and exacerbates the mismatch between where job opportunities are located and where people live.[x] Lowering barriers to entry would help empower residents in Wards 7 and 8 to start new businesses and create jobs.

Reducing fees might result in more businesses coming aboveboard

In December of 2017, Illinois enacted a law that lowered the LLC filing fee from $500 to $150 and reduced corporate registration filing fees across the board.[xi] **Since lowering LLC fees, Illinois has seen an enormous increase in LLC registrations.**

See Appendix D, Number of LLC Articles of Organization Fillings by Quarter in Illinois

Starting a business is already an expensive and risky venture; DC Government shouldn't place extra stumbling blocks in the way. The current fees may be keeping entrepreneurs from registering and licensing their businesses. Lowering barriers so that unlicensed businesses can come out of the shadows is good for business owners, customers, and regulatory agencies alike. DC Council should support reforms that will reduce barriers for residents who want to contribute taxes, innovative ideas, and jobs to our communities.

Reform #3: Improve communication and transparency between regulatory agencies and business owners by creating a true "one-stop shop"

In addition to dealing with DCRA, most business owners must interact with myriad other agencies, including the Office of the Chief Financial Officer, DC Health, the Department of Transportation, the Department of Small and Local Business Development, the Alcoholic Beverage Regulation Administration, the Department of Housing and Community Development, Office of Contracting and Procurement, and the Department of Energy and Environment, among others.[xii] Communication between agencies—and even within department sub-agencies—is scarce. Entrepreneurs often hear conflicting information from different agency representatives and waste time and money bouncing from agency to agency.

The DC Business Center is a step in the right direction, but it is not a one-stop shop, as advertised

The DC Business Center was created to streamline the interactions business owners have with DC's agencies, and make it easier for entrepreneurs to start, grow, and maintain their businesses. The Center is a step in the right direction, as it helps aggregate information and allows the applicant to create a personalized checklist of compliance tasks that must be completed. But it's not a true one-stop shop.[xiii] It does not necessarily make the applicant's interaction with agencies easier or more streamlined; it simply tells the applicant which agencies they must visit. Further, it does not operate as an online portal with a single log-in, as is the goal of most one-stop portals.

Delaware created a one-stop shop, and saw improvements in processing times and customer satisfaction

In 2006, Delaware created a single log-in, one-stop shop to allow new businesses to register online through a streamlined application process that eliminates the need to contact different state agencies.[xiv] The goal was to save time and money for businesses and for state government. As a result, Delaware saw immediate growth in consumer satisfaction and reductions in processing times.

Delaware's One Stop allows users to complete corporate registration and business licensing; register with the Department of Labor, Division of Unemployment and the Office of Workers' Compensation; connect with the Internal Revenue Service (IRS) to obtain a Federal Employer Identification Number (FEIN) and with Delaware's Division of Corporations. Through this portal, a business owner can complete one or all of these applications in one place. The application process enables the user to pay fees using a credit or debit card and print a temporary business license that they can use until they receive their permanent license in the mail. As part of this effort, Delaware also enacted reforms to improve inter-departmental communication, and streamlined regulations overall.

The One Stop resulted in immediate improvements in processing times and customer satisfaction: "Within the first year after launch One Stop utilization grew to over 30% of all new business registrations while enabling a 300% improvement in license processing time and a nearly 90% satisfaction rate among customers using the service."[xv]

Before implementing this One Stop process, Delaware's business registration and licensing process looked a lot like DC's. Applicants had to "visit three separate state agencies, as many as six divisions within these agencies, and then await the arrival of their business license in the mail; not to mention any other licensing requirements at the county

or local levels." Each agency required their own forms and "the result was a process that was cumbersome, lengthy and confusing to the potential new business owner," just like in DC.

Delaware isn't alone; cities including Chicago, New Orleans, and Riverside have also created one-stop shops.[xvi] DC should follow this best practice and enact a true one-stop shop.

Reform #4: Reform requirements that create barriers for low-income residents and returning citizens

DC Government encourages returning citizens to start their own businesses through training programs like Aspire to Entrepreneurship, but restrictions like the Clean Hands certification—as well as background checks for certain BBLs, and "good moral character" requirements for occupational licensing—create needless barriers for returning citizens and low-income residents.[xvii] DC Council should seek to support, not alienate, returning citizens as they re-enter the workforce.

The Clean Hands Certification requirement is too low and too inclusive

An additional cost and major barrier in the BBL process is Clean Hands Certification. In order to obtain a BBL, applicants must sign an affidavit certifying that they do not owe more than $100.00 to DC Government. If an applicant owes more than $100.00 to DC Government, they must settle those debts before proceeding. The requirement imposes a dollar limit that's far too low—so low, that it almost certainly shuts out low- and moderate-income folks from starting their businesses. Many Washingtonians owe DC Government more than $100. To give some context, a driver caught twice speeding just one mile over the speed limit would already hit the $100 limit.[xviii]

The Clean Hands dollar limit is also far too inclusive, covering money owed pursuant to fines, past due taxes, DC Water and Sewer Authority service charges, parking fees, and much more.

Specific reform ideas to lessen the burden of Clean Hands Certification

- **Offer payment plans or debt abatement:** Currently, applicants may acquire a license if they have entered into a payment schedule, with approval from District government. But this opportunity is buried in DC Code. Officials should offer more payback or debt abatement options—and should advertise them to applicants more clearly.
- **Make the process less confusing:** Applicants may be confused as to when they should submit their Clean Hands certification. DCRA should simplify its website's language to steer applicants toward the simplest option.
- **Reform punitive fines and fees:** Applicants are fined $1000 for making knowingly false certifications during the Clean Hands approval process. This overly punitive fine hurts those trying to better their situations by starting a business.

Returning citizens and low-income Washingtonians deserve the opportunity to build wealth for themselves and their families by starting and growing businesses. DC Council and DCRA should remove regulations that unnecessarily impede on that right.

Reform #5: Review and reform home-based business regulations to ensure they allow entrepreneurs to start small businesses in their homes

As the price of commercial space in DC rises, entrepreneurs find it increasingly difficult to afford to start and grow their businesses. Home-based businesses provide an affordable way for entrepreneurs to start small in their homes, reduce business costs, and save money on transportation and childcare. This model can provide a stepping stone to commercial space while the entrepreneur collects revenue and creates a customer base. But DC's current regulations make this option less accessible by defining home-based businesses too narrowly and putting burdensome regulations and paperwork requirements on home-based entrepreneurs.

Streamline home-based business registration and regulations

DC defines a home-based business narrowly—and the list of allowable professions is small—likely leaving out innovative businesses that could thrive in a home environment. There are **too many regulatory conditions**, and some are arbitrary and don't allow for innovation.[xix]

To start a home-based business, an applicant must abide by a list of "basic conditions." For instance, no more than 25% of the dwelling's floor area, or 250 square feet, can be used for the business, and the business cannot have more than one employee who is not a dwelling resident. There is an outlined list of allowable professions, including businesses like daycares, hair styling, and tailoring.[xx]

After determining that the applicant's occupation and home space pass DCRA's regulatory requirements, they must file an HOP Application and supporting documentation—which includes a copy of license, copy of articles of incorporation, listing of corporate officers, Letter of Good Standing, copy of occupational license—along with the accompanying fees for each document. The process can quickly become expensive and arduous for entrepreneurs looking to start small without much capital.

Expand and streamline DC's cottage food regulations

In 49 states, cottage food laws allow food entrepreneurs to prepare and sell safe and shelf-stable foods like baked goods from their homes. DC Council passed a law allowing the sale of these goods in 2013, but the regulations and registry for this practice were not fully posted until July of 2018. Since DC Council passed the cottage food law in 2013, states around the country have passed more expansive cottage food laws, and **DC now has one of the worst cottage food laws in the country.**

As far as we know only one person, Emily Annick of 440 Confections, has successfully registered as a cottage food business in DC.[xxi] Cottage food producers are only allowed to sell at farmer's markets and permitted special events, and it is difficult or impossible for small-scale producers to secure stalls at these events. They are also capped at $25,000 in revenue. Producers are required to complete an arduous registration process which includes signing up for the registry, obtaining a Home Occupation Permit, completing food manager certification training, and completing DC Health's inspection process.

When asked about DC's regulations, Annick said, "It's a big impediment to people who want to start their own business. You can only do it as a hobby." DC's cottage food business laws trail far behind our neighbors in Maryland and Virginia. DC should enact reform to streamline the registration process and allow producers to sell goods from more venues with no revenue cap.

Home-based businesses offer opportunities for women, minorities, and veterans, and they provide flexibility to entrepreneurs.[xxii] DC Council should work with DCRA to streamline home-based business registration and regulations to make this business model more accessible.

Conclusion

Starting and running a small business has long been a viable path towards achieving the American Dream. This path should be open to all DC residents regardless of income or zip code. Until we work to reduce regulatory barriers to entrepreneurship, like expensive fees and time-consuming paperwork, we will be keeping Washingtonians out of work, especially those in communities most in need of economic development.

DC has the opportunity to become a model for innovation, good governance, and smart regulations. We look forward to working with Mayor Bowser, DC Council, and regulatory agencies to enact reforms that will help Washingtonians earn a living for themselves and their families by doing what they love.

Endnotes

[i] DC's Economic Strategy. http://dceconomicstrategy.com/wp-content/uploads/2016/10/DC-Economic-Strategy-Strategy-Report-FULL-May-1-2017-1.pdf

[ii] A one-stop shop is a website or office that allows entrepreneurs to complete all of their paperwork in one place. One-stop shops often promise single log-ins and a centralized online portal so that entrepreneurs do not have to contact the various agencies themselves and get lost in an inter-agency informational labyrinth.

[iii] List of BBL categories, DCRA. https://dcra.dc.gov/service/directory-all-basic-business-license-categories; List of endorsements. https://dcra.dc.gov/service/basic-business-license-bbl-endorsements

[iv] DCRA's Business License Verification. https://eservices.dcra.dc.gov/BBLV/Default.aspx

[v] Directory of All Basic Business License Categories, DCRA. https://dcra.dc.gov/service/directory-all-basic-business-license-categories

[vi] CNN Money. https://money.cnn.com/2017/01/12/pf/americans-lack-of-savings/index.html

[vii] D.C. Policy Center. https://www.dcpolicycenter.org/publications/technology-fee/

[viii] DC Code § 47–2851.04. https://code.dccouncil.us/dc/council/code/sections/47-2851.04.html

[ix] D.C. Policy Center. https://www.dcpolicycenter.org/publications/technology-fee/

[x] Urban Institute. https://www.urban.org/urban-wire/inequality-district-not-just-income-businesses-too

[xi] Patch. https://patch.com/illinois/elmhurst/tom-cullerton-cuts-excessive-fees-small-businesses https://www.chicagotribune.com/suburbs/glen-ellyn/community/chi-ugc-article-tom-cullerton-cuts-excessive-fees-for-small-b-2017-12-20-story.html

[xii] D.C. Policy Center. https://www.dcpolicycenter.org/publications/technology-fee/

[xiii] Start a Business Wizard. https://business.dc.gov/startwizard

[xiv]Delaware's One Stop Business Registration and Licensing Executive Summary. https://www.nascio.org/portals/0/awards/nominations2007/2007/2007DE4-NASCIO%202007%20Award%20One%20Stop.pdf

[xv] Ibid

[xvi] Unclogging the Permit Pipeline. https://www.manhattan-institute.org/html/urban-policy-2018-unclogging-permit-pipeline-11509.html

[xvii] D.C. Policy Center: Obstacles to employment for returning citizens in D.C. https://www.dcpolicycenter.org/publications/barriers-to-employment-for-returning-citizens-in-d-c/

[xviii] Traffic Tickets: The District Profits and Residents Pay. https://www.washingtoncitypaper.com/news/article/21022176/dc-traffic-tickets-the-district-profits-and-residents-pay

[xix] DCRA's Get a Home Occupation Permit. https://dcra.dc.gov/service/get-home-occupation-permit

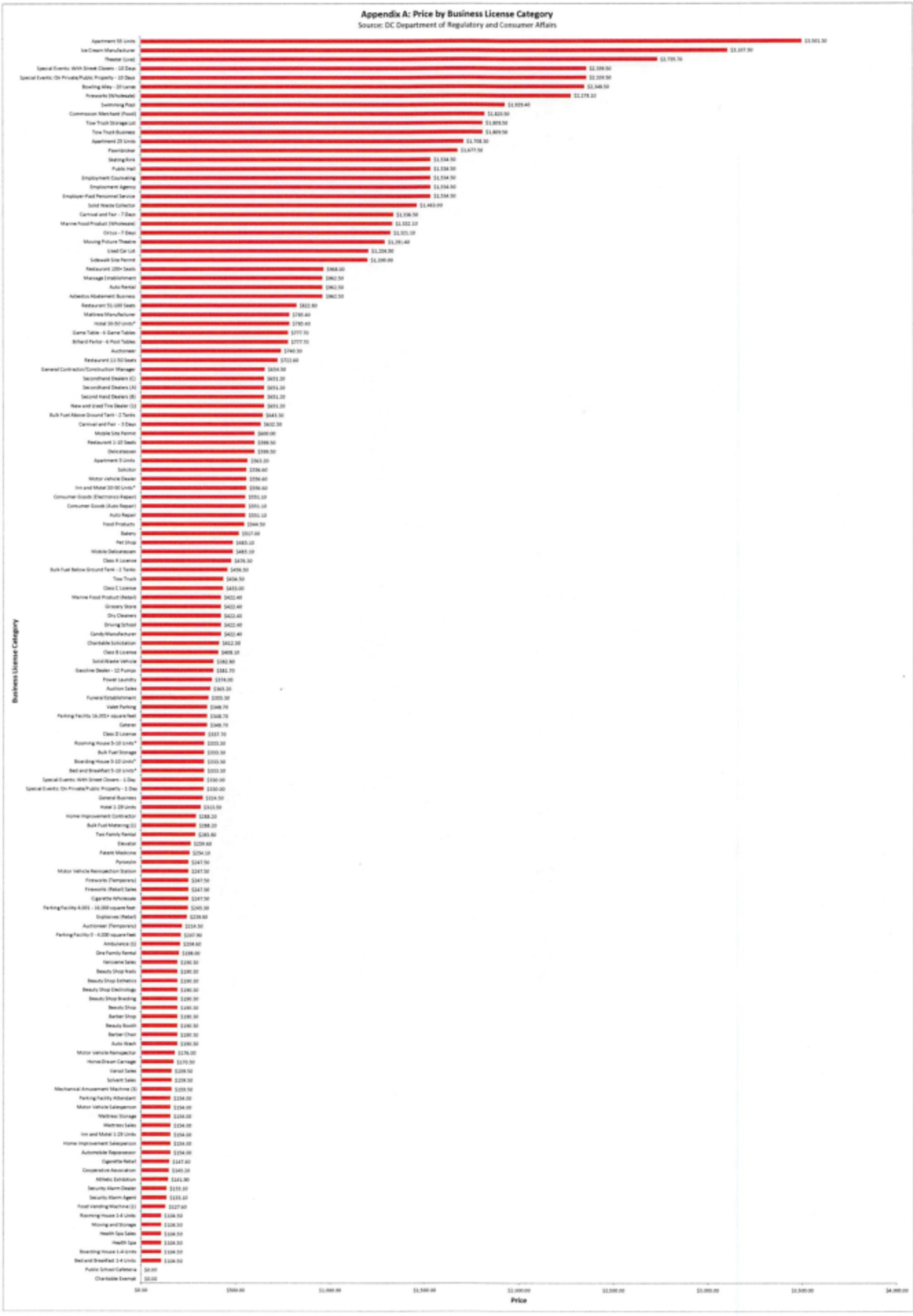
[xx] DCMR Section 11-203. http://dcrules.elaws.us/dcmr/11-203

[xxi] This Chocolate Company Just Became D.C.'s First Cottage Food Business. https://dcist.com/story/18/11/20/this-chocolate-company-just-became-d-c-s-first-cottage-food-business/

[xxii] Finding the American Dream at Home. https://ij.org/report/finding-american-dream-home/

Appendix A: Price by Business License Category

Source: DC Department of Regulatory and Consumer Affairs



Appendix B: Food-related Basic Business License Categories

Candy Manufacturer License

Description: "This classification applies if you manufacture chocolate confectioneries from chocolate produced elsewhere and manufacture non-chocolate confectioneries. This classification also applies if you retail confectionery products not for immediate consumption made on the premises from chocolate made elsewhere."

Category License Fee: $289
Application Fee: $70
Endorsement Fee: $25
10% Technology Fee: $38.40
Total: $422.40

Shouldn't candy count as a food product? The candy manufacturer category is likely a relic.

Food Products License

Description: "This classification applies if you sell "prepackaged" food items prepared on a licensed premise including foods typically found in convenience stores, grocery stores, and gasoline station food marts such as cereals, snack foods, packaged sandwiches, and other similar items."

Category License Fee: $400
Application Fee: $70
Endorsement Fee: $25
10% Technology Fee: $49.50

Total: $544.50

These definitions are identical. Categories with similar or identical language should be combined.

Delicatessen License

Description: "This applies to businesses where food, drink, or refreshments are cooked, prepared and sold for consumption off the premises."

Category License Fee: $450
Application Fee: $70
Endorsement Fee: $25
10% Technology Fee: $54.50
Total: $599.50

Why is it cheaper to start a banquet hall than a small deli? Licensing fees should be tied to the size and risk of the business activity.

Mobile Delicatessen License

Description: "This applies to businesses where food, drink, or refreshments are cooked, prepared, and sold for consumption off the premises."

Category License Fee: $346
Application Fee: $70
Endorsement Fee: $25
10% Technology Fee: $44.10
Total: $485.10

Why are these treated as two distinct categories when the activities look so similar?

Caterer License

Description: "Any person or business that provides and prepares food, drink, or refreshments, with utensils to serve them, for use and consumption on premises other than where they're prepared. Banquet halls with catering staff are included. Caterers serving alcoholic beverages must apply for ABC licenses."

Category License Fee: $222
Application Fee: $70
Endorsement Fee: $25
10% Technology Fee: $31.70
Total: $348.70

Vendor License

Description: "Any person engaged in taking and selling goods and services for immediate delivery upon purchase, which operates exclusively from public space."

Class A Fee: $476.30
Class B Fee: $408.10
Class C Fee: $433
Class D Fee: $337.70
Mobile Site Permit Fee: $600
Sidewalk Site Permit Fee: $1200

This information was found in DCRA's Directory of All Basic Business License Categories at https://dcra.dc.gov/node/514522

Appendix C: Fees to Start a Business in DC

As an example, here are the typical fees required to register and license a delicatessen business in DC:

Fee Type	Cost
Certificate of organization for an LLC	$220.00[i]
Registering a trade name	$55.00[ii]
Category License Fee for a Delicatessen*	$450.00[iii]
Application Fee	$70.00[iv]
Endorsement Fee	$25.00[v]
Technology Fee	$54.50[vi]
Food protection manger certification	The price can vary, but typically around $150.00
DC Food Protection Manager ID	$35.00[vii]
Zoning registration: Certificate of Occupancy	At least $75[viii]
TOTAL FEES: $1,134.50**	

Other regulatory fees entrepreneurs commonly encounter include building permits, retrieving copies of certain documents, special permits, business certification, and late fees.

Many fees, like the biannual corporate reporting fee and all fees related to basic business licensing (category fee, application fee, endorsement fee, and technology fee) must be repaid every two years. Health requirements like food protection certification and the DC Food Protection manger ID must be renewed every three years.[ix]

This example does not include occupational licensing costs, which are common for many professions. The fees for occupational licenses vary widely. On average, fees for lower-income occupations in DC cost $400 and require 261 days of training and an exam, but they can reach as high as $1,485 and 6 years of training (this is for Interior Designers).[x] These fees do not include the cost of the training requirements, which can range in the thousands.

*For a full list of business license category fees, see *Appendix A, Price per Business License by Category.*

**In addition to the fees above, the applicant must settle any debts with DC Government over $100.00.

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[i] Corporations Division Fee- Limited Liability Company. https://dcra.dc.gov/book/fees-corporate-registration-services/corporations-division-fees-limited-liability-company

[ii] General Corporate Filing- All Entities. https://dcra.dc.gov/book/fees-corporate-registration-services/general-corporate-filing-all-entities.

[iii] DCRA's Get a Delicatessen License. https://dcra.dc.gov/service/get-delicatessen-license

[iv] Ibid

[v] Ibid

[vi] Ibid

[vii] DC Health's Instructions on How to Apply for New/Renewal or Replacement ID Cards. https://doh.dc.gov/sites/default/files/dc/sites/doh/publication/attachments/Application%20for%20ID%20Cards-1.pdf

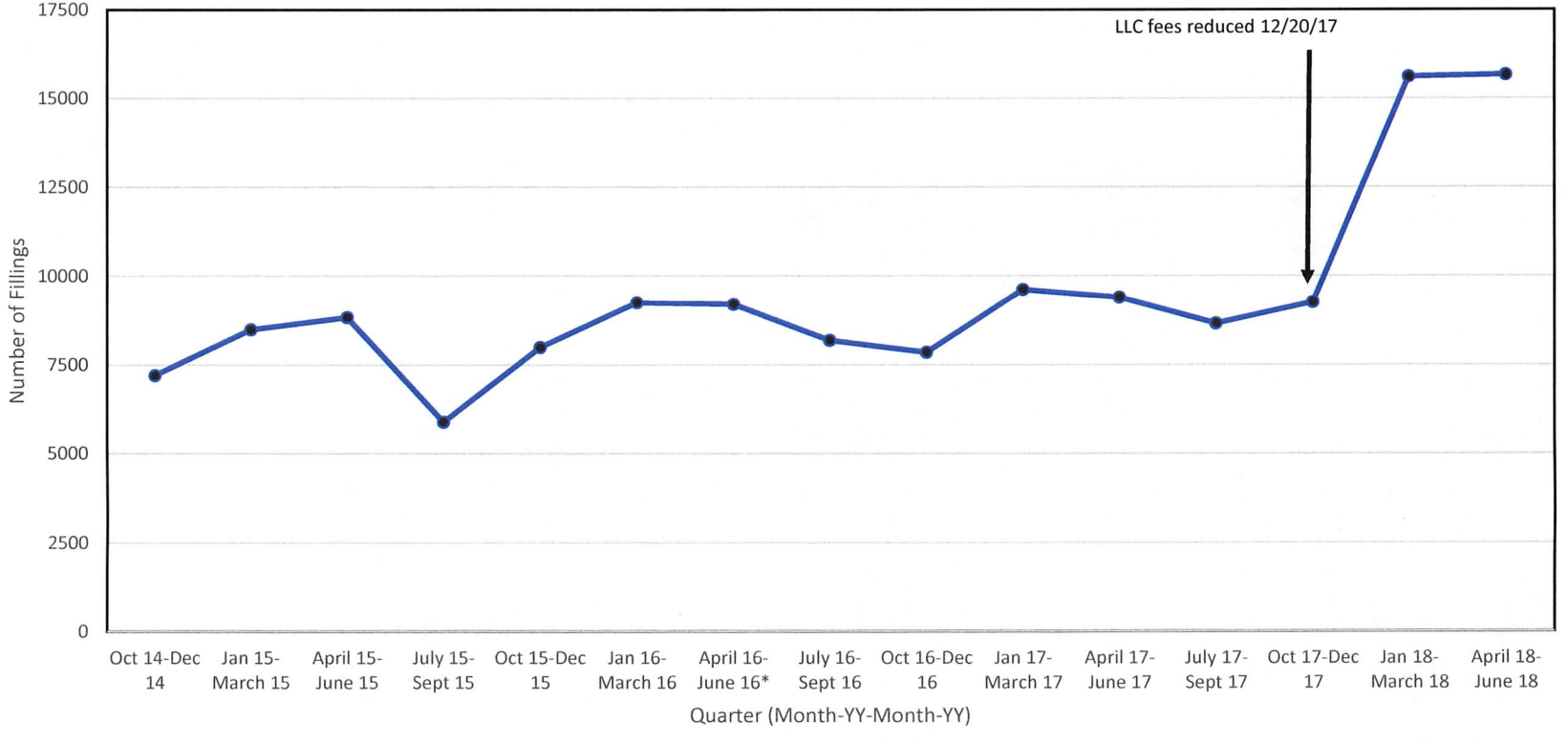
[viii] DCRA's Get a Certificate of Occupancy. https://dcra.dc.gov/service/get-certificate-occupancy

[ixix] DC Health fee schedule. https://dchealth.dc.gov/sites/default/files/dc/sites/doh/publication/attachments/FEES%20-%20service%20fees%20to%20be%20charged%2012-04-18.pdf

[x] License to Work, 2nd Edition. Institute for Justice. https://ij.org/report/license-work-2/ltw-state-profiles/ltw2-d-c

Appendix D: Number of LLC Articles of Organization Filings by Quarter in Illinois

Source: Illinois Secretary of State, Department of Business Services



Chairman Mendelson and members of the committee,

My name is Joe Gersen and my family lives in Bloomingdale in Ward 5.
My wife and I testified before this Committee in 2017 and 18 at previous DCRA oversight hearings.

To remind the committee of our case, in the summer of 2017 a developer renovated the property adjoining to ours. During their excavation and underpinning of their basement, they did serious structural damage to our house. There is a 12 foot crack across the front façade of our house, our doors don't work, our windows slant, and our floors are sloping.

During the construction, we called and pleaded for DCRA to come and inspect. They would not even come to our house to see the damage. When they finally did inspect our house they told us that we would have to sue the developer.

I am here today to tell the Council what it is like to try to resolve foundation damage through the legal process like DCRA suggests. First, we have dealt with an unethical developer that has lied to us, forged my signature, and he even brought in a "structural engineer" to inspect the damage to our house who we later found out was the 3rd party building inspector who was not a structural engineer AND who has since had his professional engineering license revoked due to due to causing "imminent danger to the health and safety of persons in the District". Second, we are fighting big insurance companies that would rather spend money on lawyers to fight a claim rather than pay for the damage that was done. We have had to hire structural engineers, construction and building code experts, and lawyers all on our own expense. All of this while having to continue to live in a house that has cracks, slanted floors, windows that do not work, and a damaged foundation. We can't even sell our house if we wanted to because no one will buy a house with a damaged foundation.

Over the last two years we have continued to meet with DCRA officials updating them on our case and pleading with them to investigate. For nearly two years, we have continued to receive the same response - "Damage to your property is a civil matter best resolved through the legal process."

I ask the committee to focus on the next oversight hearing on how DCRA feels that they have no role in protecting adjoining properties from damage despite the building code clearly stating that "adjoining public and private property shall be protected from damage during construction, remodeling or demolition work."

I also urge the Council to break DCRA up and establish the Department of Buildings. The office of Strategic Enforcement within the proposed Department of Buildings would be a welcome change in my mind.

In closing, please do not allow DCRA's mismanagement to continue. The status quo is unjust and it is unfairly ruining District resident's lives.

Joe Gersen
2208 Flagler Place NW
Washington, DC 20001

Committee of the Whole: What Issues Should the Committee Pursue
Testimony of Alan Gambrell

My name is Alan Gambrell, Lanier Heights residents in Ward 1. I've testified before, since 2015, regarding zoning and construction code issues. Some of my thoughts on what this committee should pursue regarding DCRA are unchanged from prior years. The message you should hear? Little seems to have changed when it comes to access to information and expectations that regulations will be implemented as written and not twisted to accommodate the wishes of developers and zoning lawyers.

With that, here are my thoughts but bear in mind these are anecdotal perspectives based upon what happens in my neighborhood. But imagine if this is going on citywide. That's a problem.

Staff Training

First, I don't know, what training staff receive but I am aware of things like a compliance inspector who is sent out to check out a complaint but goes to the front of the property but not the back where the problem exists. Or a permit that is approved that shows bedrooms that are actually garages and stairs that are nonexistent.

The city council should ask for a copy of DCRA training manuals, if they exist.

DCRA's Responsiveness

Second is getting DCRA's attention. Someone who has never dealt with DCRA doesn't know who to turn to? I know and guess who that is? The director of DCRA and/or the Zoning Administrator and/or my councilmember, Brianne Nadeau, who has been incredibly helpful. It makes no sense to have to go to the agency director on zoning concerns. But there's no mechanism in place.

A triage system is needed, like a person, an office, to field consumer concerns about zoning.

I might add that former director of DCRA Melinda Bolling always responded and directed her staff to follow up. As for the former director, I have sent 2-3 emails to him in recent months. He hasn't replied to any of them. And the Zoning Administrator no longer responds to my emails.

DCRA Before the BZA

Third, as you know, DCRA goes before the Board of Zoning Adjustment. Surely, there is something that the city council and mayor can do to ensure that the Zoning Administrator, in defending DCRA decisions, never ever again be allowed to say: it has been my "long-standing practice."

The city council and mayor should ensure that the only defense DCRA should use before the BZA is the actual words in the zoning regulations.

Consumer Voice

Fourth, the agency title is Department of Consumer and Regulatory Affairs but there is little evidence that Consumers are much on DCRA's mind when it comes to implementing the regulations. When it comes to neighbors who raise concerns about building permits and compliance with zoning, DCRA's natural tendency seems to be to dig in its heels, not respond to neighbor questions, and align itself with a developer's lawyer when the agency should be aligning itself with the regulations.

Again, DCRA should be reorganized to create a place for consumers to voice their concerns and have them addressed.

Alan Gambrell
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Washington DC 20009

dc's CHILDREN'S LAW CENTER

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Testimony Before the District of Columbia Council
Committee of the Whole
February 6, 2019

Public Oversight Roundtable
DCRA: What Issues Should the Committee Pursue?

Anne Cunningham
Senior Policy Attorney
Children's Law Center

Thank you, Chairperson Mendelson and members of the Committee of the Whole for this opportunity to contribute to the development of Committee priorities regarding DCRA. My name is Anne Cunningham, and I am a Senior Policy Attorney with Children's Law Center[1] and a resident of the District. Children's Law Center fights so every DC child can grow up with a loving family, good health and a quality education. With 100 staff and hundreds of pro bono lawyers, Children's Law Center reaches 1 out of every 9 children in DC's poorest neighborhoods – more than 5,000 children and families each year. We represent many children and families who live in rented homes in the District, and one component of our practice is representing tenant-families whose landlords are not complying with DC's housing code.[2]

Introduction

Poor conditions in rental housing have a much broader impact than a family's discomfort. DC contains around 180,000[3] occupied rental units. Consequently, poor rental conditions are also an expensive public health concern. Exposure to environmental allergens, such as mold and vermin, can cause both acute medical crises as well as the development of chronic, lifelong ailments. Lead exposure can permanently damage a child's development. Poor conditions in rental housing can make it hard to sleep, eat, and thrive, thus impacting a child's performance in school or a mother's ability to go to work. Failure to prevent and remediate poor conditions also contributes to the accelerated deterioration and waste of our city's precious affordable

housing stock. The costly human and fiscal consequences of unsafe and unsanitary housing are why we hope you will continue to prioritize improving DC's enforcement of the residential housing code—currently a DCRA responsibility.

This is the seventh time in 20 months that we have testified before this Committee regarding DCRA. In past testimonies, we provided extensive anecdotal and data-supported evidence of DCRA's persistent failure to adequately fulfill its housing code enforcement functions.[4] Many of the concerns we have raised were confirmed in a report published by the D.C. Auditor this past September.[5] We will use our time today to outline the legislative solutions we hope you will prioritize in the Fiscal Year 2020 Budget and the new legislative session:

1. **Pass and Fund an Amended Version of the Department of Buildings Establishment Act of 2018.**[6]

Thank you for demonstrating your commitment to DCRA reform by reintroducing the Department of Buildings (DOB) Establishment Act. As you know, we strongly support this legislation's proposal to break DCRA into smaller pieces. DCRA's size, the extremely broad scope of its mission, and its lack of a strong consumer protection culture have rendered DCRA ineffective in enforcing DC's residential housing code. Furthermore, given the persistence of DCRA's problems over many years, we are certain that nothing short of a major overhaul will bring meaningful reform to the agency and to housing code enforcement in the District. We continue to

ask that you take your DOB proposal one step further by either establishing a third agency, or a separate division within DOB, with a dedicated mission of protecting tenants and rental housing. We testified at length regarding specifics surrounding this proposal during the bill's April, 2018 hearing. Please see Attachments 2 and 3 for our depictions of both the bill's currently envisioned DOB organizational structure, and advocates' proposal for a tenant/rental protection agency or division within DOB.

We hope this Committee will amend the bill in markup to also include the other legislative solutions we highlight below.

2. **Fund and Oversee Implementation of the DCRA Omnibus Amendment Act of 2018.**

We hope to work with you, Chairperson Mendelson, and your colleagues, Councilmembers Silverman, Bonds, Allen, and Robert White, to ensure the DCRA Omnibus Amendment Act of 2018 is fully funded and implemented in Fiscal Year 2020. While we enthusiastically support this legislation in its entirety, we are particularly eager for implementation of the corporate transparency component of this bill. Such transparency will meaningfully improve our government's ability to hold slumlords accountable.

3. **Bring Strategic Planning and a Public Health Focus to DC Residential Housing Code Enforcement by: Establishing a Public Health Division; Mandating Robust Data Collection and Transparency; and Training Agency Inspectors to Cite for Mold, Lead, and Asbestos.**

Children's Law Center, informed by our own work and our work with medical and public health partners, believes the work of residential enforcement must be approached strategically and from a public health perspective. At the hearing for the DOB Establishment Act, we strongly suggested creating a Public Health Division. Given the direct link between population health and built environment, we feel infusing public health expertise into agency leadership would improve both strategic enforcement and individual outcomes.

The new agency should also have some or all inspectors licensed in multiple areas, including housing code enforcement, lead inspection, mold inspection, asbestos inspection, and extermination.[7] This is important not only to ensure that the agency understands the scope of DC's public health issues, but also so landlords and tenants can more readily access these services. Currently, these functions are overseen across multiple agencies and the private market. We also believe streamlining these inspection processes into just one agency will reduce overall costs.

Additionally, this Public Health Division would oversee collection and analysis of robust data which would not only inform the agency's proactive and strategic enforcement, but could also be used by sister agencies and public health practitioners. As part of BUILD Health DC[8], a unique grant that funds collaboration between Children's Law Center, Children's National Health System and DC Health to address housing conditions issues for children with asthma on an individual and systemic level,

it has become clear to us that DC is behind other cities in our ability to use inspection data to target public interventions.[9] This type of mapping—using reliable underlying data—is important to be able to do public health and legal interventions in properties with particular conditions. To this end, we believe the agency should legislatively be required to collect detailed housing code enforcement data and make that data available in real time via a regularly updated, publicly-accessible database.[10]

4. **Create a Permanent Position for the Housing Conditions Court Inspector, and Add an Inspector at Landlord/Tenant Court**

In addition to the additional inspectors within the agency, we also request funding for inspectors specifically detailed to the Housing Conditions Calendar and Landlord-Tenant Calendar.[11]

5. **Fund and Legislatively Require Adequate Staffing and Technology for Residential Inspections and Enforcement**

DCRA lacks the resources to do quality inspections, enforcement, and abatement, but has declined year after year to request those resources. On a basic staffing level, DCRA employs approximately 20-25 housing code inspectors to handle the inspection needs of DC's approximately 180,000 occupied rental units. This works out to approximately one inspector for every 7,200-9,000 units.[12] By way of comparison, Baltimore employs approximately 95 residential housing inspectors for their approximately 130,000 occupied rental units—around one inspector for every 1400

units.[13,14] Attachment 1 features a helpful graphic contrasting DC's 2018 ratio with ratios in other BUILD Health cities.[15]

These statistics regarding insufficient inspectors are compelling. However, today we want to impress upon the Committee that a separate team at DCRA is responsible for carrying out enforcement against landlords who do not comply with inspectors' Notices of Violation (NOVs). Although we have less information about this team—due partly to DCRA opaqueness around its organizational structure—we are confident it is similarly understaffed. Following up on unanswered NOVs is as critical a component of the enforcement process as inspections, so we hope you will similarly prioritize expanded staffing and training for that team.

DCRA also uses outdated technology to do its inspections and acknowledges that archaic technology has contributed to its lack of transparency.[16] Indeed, DCRA's Interim Director spoke just yesterday about DCRA's need for a "digital transformation."[17] Until very recently, if not currently, DCRA's housing inspectors created inspection reports using pencil and paper.[18]

Inspectors should be able to document and issue citations in real time as seamlessly as DPW's issues parking tickets.[19] When a citation is issued, each of the violations should be recorded in a database that alerts inspectors and enforcement personnel when important deadlines are approaching, for example for re-inspection or issuance of fines. Because DCRA collects very little data from inspections, and what

little data it does collect is unreliable, real enforcement depends entirely on the self-driven organizational skills of individual inspectors who are currently expected to perform 1,000 housing inspections annually. It is no surprise that it is virtually impossible for DCRA personnel to meaningfully enforce our residential housing code.

We would also note here that DCRA could be revenue-generating in this area if it collected fines and placed liens on properties, as it is authorized to do when landlords fail to make repairs. Revenue from fines could finance some of the important investments for which we are advocating.[20]

Given years of failure across numerous administrations, we hope you will legislatively mandate many of the proposals we are suggesting today, including by defining minimum ratios of inspectors and enforcement personnel to residential housing units. Of course, legislatively mandate staffing levels must be coupled with sufficient funding to support that staffing.

6. **Support the Lead Hazard Prevention and Elimination Amendment Act of 2018.**[21]

Councilmember Allen's landmark legislation is geared toward the Department of Energy and Environment, the agency currently responsible for enforcement of DC's lead laws. As we have stated previously, we feel these lead-related enforcement functions should be streamlined with enforcement surrounding housing conditions, asbestos, and mold, into one tenant/rental protection agency. Nevertheless, this

groundbreaking legislation proposes critical reforms for DC's approach to preventing childhood lead exposure via lead-based paint hazards in residential housing. The solutions proposed in the legislation target similar problems to what we have seen at DCRA, including inadequate enforcement and poor data collection and reporting, which have resulted in a hazy understanding of the scope of our lead exposure problems in DC. The bill also establishes a fund to fill in the void left by DHCD's loss this past year of a $4.1M HUD-sponsored Lead-Based Paint Hazard Reduction Program Grant[22], intended to provide lead remediation grants for landlords renting to low-income tenants.[23]

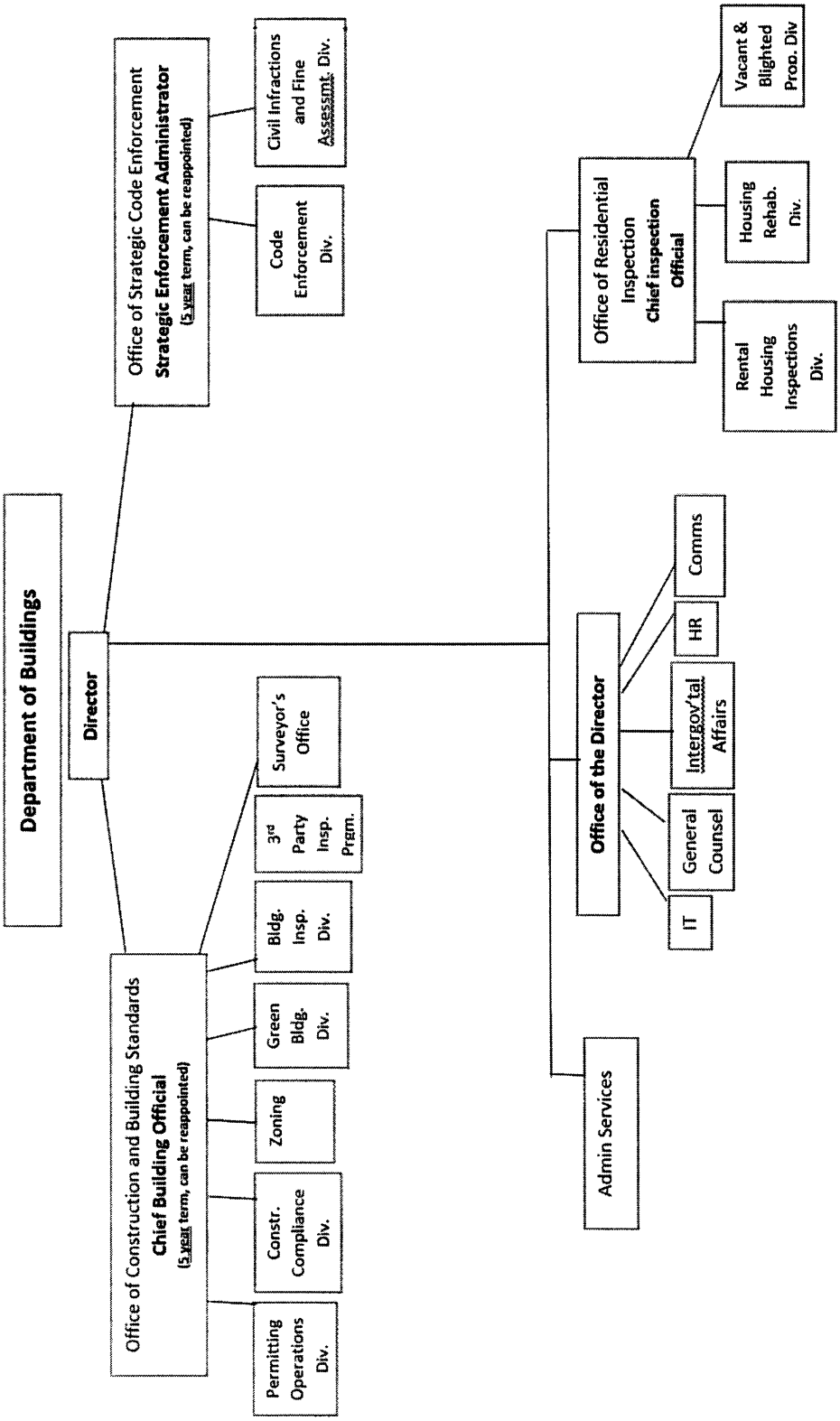
Conclusion

Thank you for this opportunity to testify. I would be happy to answer any questions.

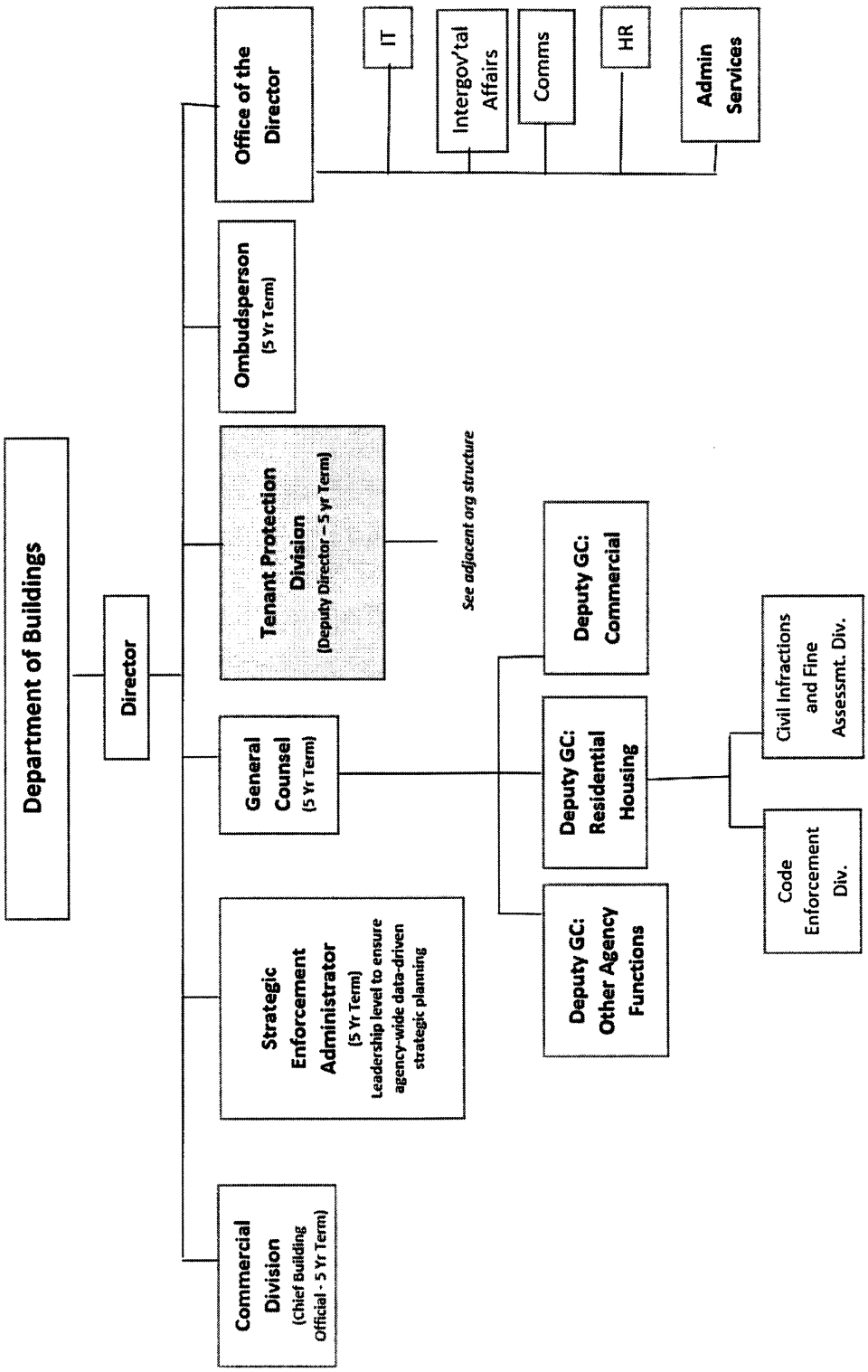
***Attachment 1*: BUILD Health Infographic**


PHILADELPHIA
270,000
Rental Properties
1 INSPECTOR FOR EVERY
4.5K
PROPERTIES
TRENTON
9,119 Rental Properties
1 INSPECTOR FOR EVERY
911
PROPERTIES
WASHINGTON D.C.
187,000
Rental Properties
1 INSPECTOR FOR EVERY
12.5K
PROPERTIES
The BUILD Health Challenge strengthens partnerships between community-based organizations, hospitals and health systems, local health departments, and others, to cultivate a shared commitment to moving resources, attention, and action upstream to drive sustainable improvements in community health. Since 2015, the BUILD Health Challenge has mobilized nearly 40 community-based partnerships to help address health problems using a bold, upstream approach.

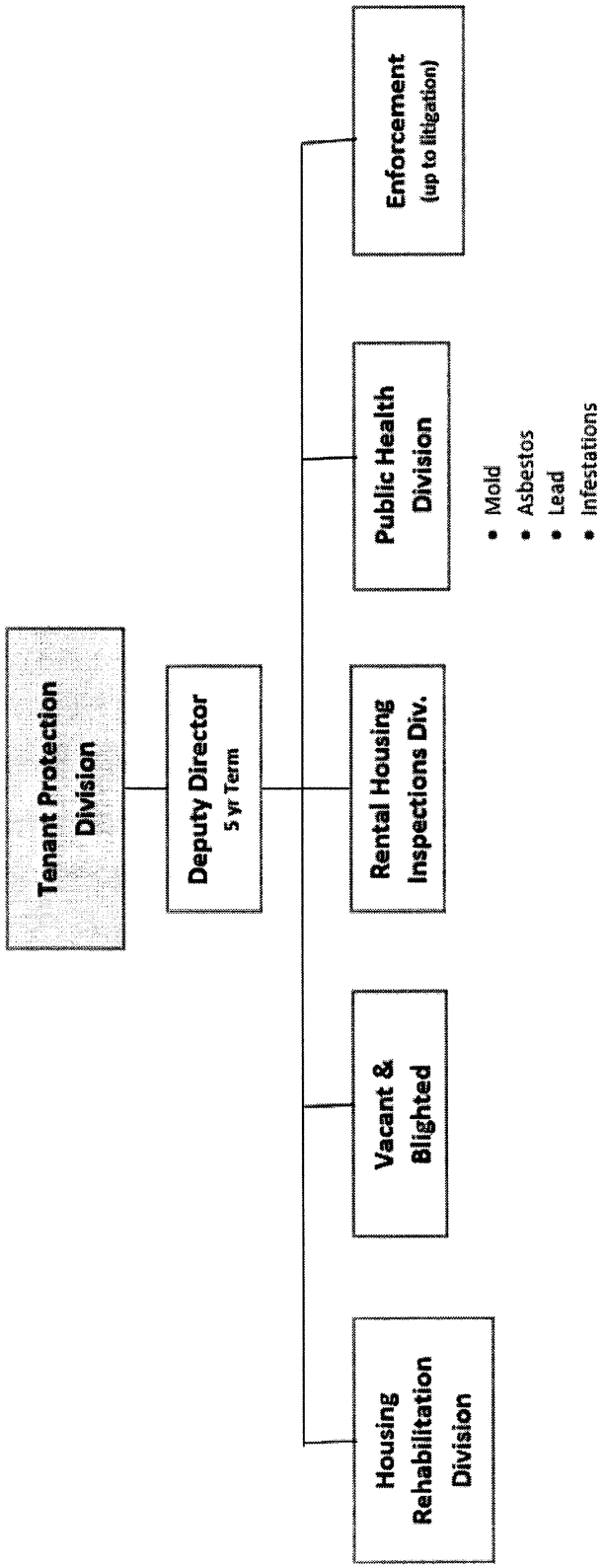
Attachment 2: DOB Organizational Structure as Currently Envisioned by B23-19



Attachment 3: Advocates' Alternative Proposal for DOB Organizational Structure



Attachment 3: **Cont'd**



[1] Children's Law Center fights so every child in DC can grow up with a loving family, good health, and a quality education. Judges, pediatricians, and families turn to us to be the voice for children who are abused or neglected, who aren't learning in school, or who have health problems that can't be solved by medicine alone. With 100 staff and hundreds of pro bono lawyers, we reach 1 out of every 9 children in DC's poorest neighborhoods--more than 5,000 children and families each year. And, we multiply this impact by advocating for city-wide solutions that benefit all children.

[2] Children's Law Center frequently represents families whose homes' poor conditions are so severe they harm the health of the children living in them. In those instances, the child's pediatrician refers the family to us for legal representation to secure healthy, code-compliant conditions. In addition to our direct services work, we have attended the DCRA advocate meetings for over nine years, and have used those meetings as an opportunity to provide DCRA feedback about our concerns over that time. Unfortunately, the practices we see have remained largely unchanged since we started doing this work almost a decade ago.

[3] We estimate DC's occupied rental units to be in the 175,000-185,000 range based on 2010 population and rental housing data extrapolated to today, as well as on 2016 data showing the number of non-owner occupied housing units to be approximately 186,000. This, however, does not take in to account the number of unoccupied units. The number of unoccupied rental units in 2010 was 13,000 and demand for DC rental housing has increased since that time. (Use https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml and input "Washington DC," and https://www.census.gov/quickfacts/fact/table/DC/PST045217 2016 data.)

[4] Children's Law Center has testified at seven hearings related to DCRA over the past 1.5 years. Those testimonies are available on our website: Oct. 2018 Public Hearing re. DC Auditor's Report *at* https://www.childrenslawcenter.org/testimony/testimony-district-columbia-auditor's-report-housing-code-enforcement-case-study; July 2018 Public Hearing for DCRA Omnibus Act *at* https://www.childrenslawcenter.org/testimony/testimony-slumlord-deterrence-amendment-act-2017-housing-rehabilitation-incentives. Apr. 2018 Public Hearing for the Department of Buildings Establishment Act of 2018 *at* https://www.childrenslawcenter.org/testimony/testimony-department-buildings-establishment-act; Mar. 2018 DCRA Performance Oversight Testimony *at* http://www.childrenslawcenter.org/testimony/testimony-performance-oversight-dcra; Oct. 2017 Roundtable Testimony, *at* http://www.childrenslawcenter.org/testimony/testimony-dcra-inspection-and-enforcement-tenant-housing; and July 2017 testimony, *at* http://www.childrenslawcenter.org/testimony/testimony-dcra-inspection-and-enforcement-housing-code-violations.

[5] Office of the District of Columbia Auditor, *Housing Code Enforcement: A Case Study of Dahlgreen Courts*. Sept. 24, 2018. *Available at* http://dcauditor.org/report/housing-code-enforcement-a-case-study-of-dahlgreen-courts/.

[6] B22-0669 – Department of Buildings Establishment Act of 2018, *introduced* Jan. 23, 2018. Available at http://lims.dccouncil.us/Download/39619/B22-0669-Introduction.pdf.

[7] To this end, we support the newly introduced Indoor Mold Remediation Enforcement Amendment Act of 2019, which requires DRCA to issue NOVs to landlords whose properties contain ten or more square feet of mold.

[8] *See* http://buildhealthchallenge.org/communities/2-healthy-together-medical-legal-partnership/.

[9] Many other cities and counties have the capacity to map their housing code data, including Baltimore (http://www.baltimorehousing.org/code_enforcement), Cincinnati (http://cagismaps.hamilton-

co.org/cagisportal/online/cincinnati), Boston (https://data.boston.gov/, https://data.boston.gov/dataset/code-enforcement-building-and-property-violations), Prince George's County (https://data.princegeorgescountymd.gov/Urban-Planning/Prince-George-s-County-Housing-Code-Violations-Map/i9iw-juus/data).

[10] This would also be useful for agency oversight.

[11] The DCRA inspector detailed to DC Superior Court's Housing Conditions Calendar is really the backbone of that court. Advocates believe that a similarly staffed inspector to Landlord-Tenant would aid in resolving serious housing code violations in that court as well.

[12] In FY18, DCRA employed 15 inspectors. Our understanding is that additional inspectors were funded for the FY19 budget but we are uncertain exactly how many were hired. We would note that in 2005 when DC had fewer rental housing units, DCRA employed 40 residential housing inspectors. Lydia Depillis, *Meet the New Boss: DCRA's Nicholas Majett*, 1/18/2011, *available at* https://www.washingtoncitypaper.com/news/housing-complex/blog/13121520/meet-the-new-boss-dcras-nicholas-majett.

[13] *See also* David Whitehead. *DC Has a Slumlord Problem and Not Enough Inspectors to Solve it.* May 25, 2017. *Available at* https://ggwash.org/view/63547/dc-has-a-slumlord-problem-and-not-enough-inspectors-to-solve-it.

[14] Former DCRA Director, Melinda Bolling, previously testified that DCRA housing inspectors perform an average of 1,000 inspections per year. Assuming zero vacation days, this means inspectors do four inspections daily in addition to their other job functions, such as manually creating inspection reports and NOVs for each of those inspections in addition to any follow-up work and other duties.

[15] Attachment 1 *available at* https://buildhealthchallenge.org/blog/cities-right-number-housing-inspectors/.

[16] With respect to transparency, DCRA states in its FY17 Oversight Responses that it will "Improve Transparency of Housing Inspection Enforcement" by "automat(ing) the inspection, re-inspection, and the Notice of Violation and Notice of Infraction workflows" through implementation of the inspection software Accela. By our understanding, Accela is a software that will automate the creation of inspection reports and subsequent enforcement documents, processes which inspectors currently complete manually. This shift should theoretically improve DCRA's efficiency, but DCRA provides no explanation of how the software will improve transparency. Furthermore, we have serious doubts about DCRA's ability to implement complicated software. *See* DCRA FY17 Oversight Responses at 62-63.

[17] *See* https://twitter.com/mhbaskin/status/1092909945455034368.

[18] See *Sanford Capital Faces $539,500*, stating, "Violations are recorded using pen and paper, which must then be entered into the agency's computer. DCRA officials say they are upgrading to a digitized system this year."

[19] These processes should also prioritize transparency with consumers, such as making key documents readily available online.

[20] Currently, any fines collected by DCRA go to the general fund. We would ask that fines collected by the new agency be dedicated to an abatement fund within the new agency.

[21] B22-956. *Available at* http://lims.dccouncil.us/Download/40934/B22-0956-Introduction.pdf.

[22] FR-6200-N-12TC Lead-Based Paint Hazard Reduction Program, US Department of Housing and Urban Development. *See* https://www.grants.gov/web/grants/view-opportunity.html?oppId=308148.

[23] We would happy to provide further information about the tragic loss of this grant for DC, which we discovered while researching local resources for lead remediation.

DC Chamber of Commerce
DELIVERING THE CAPITAL

Testimony of Erika Wadlington
Director of Public Policy & Programs, DC Chamber of Commerce
Before the Committee of the Whole
Wednesday, February 6, 2019

Good afternoon Chairman Mendelson, Members, and Staff. I am Erika Wadlington, Director of Public Policy & Programs at the DC Chamber of Commerce and I am pleased to be here today to represent the members of the DC Chamber of Chamber, and the hundreds of thousands of employees they employ. As the voice of all businesses, the DC Chamber of Commerce represents companies large and small from all sectors. At the Chamber, we truly work hard to make living, working, and doing business in the District of Columbia a much better proposition for all. I appreciate this opportunity to provide comments to the Committee as it solicits feedback on the DC Department of Consumer & Regulatory Affairs (DCRA) because of all the executive agencies, DCRA touches all businesses entities and impacts how our members and others in the business community operate every day.

As you know, the District's business community is diverse. There are over 60,000 registered businesses[1] in the District of Columbia each helping to spur economic growth in our neighborhoods. To maintain our competitiveness as a jurisdiction and to continue to recruit and retain these innovative job creators, improving the regulatory process and landscape is of utmost importance to the DC Chamber and a part of our 2019 priorities. Oftentimes we hear and have experienced that the District's regulatory and business environment is not friendly in comparison to other jurisdictions. That the process to incorporate and establish a company in DC is complex. That the current regulatory regime is hindering entrepreneurs as they seek to start a business and that policy decisions are burdening local businesses with complex and ongoing compliance obligations. All true statements today.

[1] "Department of Consumer and Regulatory Affairs." *Business License Verification*, eservices.dcra.dc.gov/BBLV/Default.aspx.

As the committee with oversight on this matter, it is our hope that this Council can use its oversight powers to steer the agency towards meaningful regulatory reform and to encourage the agency to streamline the cost and process to start and operate a business in DC.

In the past, the DC Chamber has participated in or chaired working groups related to business regulatory reform. We understand that under Interim Director Chrappah's leadership, the agency will establish a similar working group to look at this issue and we look forward to partnering with Mr. Chrappah as they seek to make starting and growing a business in DC better.

For the purpose of today's hearing, I would recommend that the Committee direct the agency to do a deep-dive of its processes before making significant policy changes that would impact how we do business. It is our belief that to be efficient, these practices must be reviewed periodically to ensure that the regulations remain germane to current business conditions and stakeholder needs. Convoluted, problematic, redundant and expensive permitting and licensing procedures present considerable hurdles to new businesses. Not to mention the revenue that may be lost during periods of waiting or inactivity due to the current regulatory process. Thus, we can support and will suggest you encourage efforts that will simplify the steps to open and grow a business and remove unnecessary financial fees and barriers for entrepreneurs and job creators.

It is all too often that the Chamber is asked to help small businesses traverse the compliance minefield or we receive comments from members who run into roadblocks dealing with business regulatory agencies. We recommend that the Committee encourage the new leadership at DCRA to review the steps to establish a business in the District to see if any procedures are outdated and burdensome. DCRA should be asked to identify if businesses need to visit, call, or engage with multiple departments more than once for the same or similar tasks/approvals. The agency should be asked to determine if there is a lack of communication between departments involved in awarding a single license or if they rely on duplicative applicant actions.

Lastly, we would encourage and support the Committee in identifying funding and resources to do a comprehensive review of the business licensing fees and structures to ensure they are comparable to neighboring jurisdictions. This same type of analysis should be done for occupational licensing to ensure that our requirements match industry standards and our regional environment. are I would also suggest that the study involve examining models in other cities, states to identify ideas and solutions that might be replicable in the District. It is our hope that through these steps, the cost of doing business in the District will reduce.

We support and encourage the implementation of programs and initiatives that ensure residents can easily start a business in DC and efficiently secure permits and licenses to operate. These programs will greatly improve our city's regulatory hurdles.

The Committee of the Whole Public Oversight Hearing

The Department of Consumer and Regulatory Affairs

February 6, 2019 11:00 am

Chairman Mendelson,

Thank you for continuing the conversation with DC residents on how our personal experiences, and those of our neighbors, can improve the functionality of DCRA today, and what can be done to improve the agency going forward.

I have concerns about the **Velocity program** and how it is being used in rowhouse neighborhoods. Are abutting neighbors receiving the proper notification about work that may affect their homes, especially if underpinning is, or should be, required? I don't know the answer, but I can see two houses in my neighborhood, with massive basement dig outs that were permitted with Velocity. Both have Stop Work Orders, but the reasons are not available online.

A third house with a major basement digout did not use the Velocity program, but is applying for multiple permits. While I understand there can be a need for multiple, even revised permits, at times, I have cited many examples to the Council, and to the former Director, that show they can be problematic, obscuring the need for zoning review, BZA compliance, structural review, and final inspections. Some applications are error ridden, others plain fraudulent, and my repeated request to require photographs of existing conditions could help prevent the resulting errors in DCRA issuing permits in some of these cases.

The length of time for **illegal construction inspections** seems only to get worse, and to submit requests through 311 can be frustrating. I find it offensive that they require personal information to file a report. Also, DCRA staff has shared information about residents who have reported illegal construction.

Despite the Council increasing the number of inspectors, the lag time seems worse, and DCRA is now discouraging after hours calls except in emergencies. The public requested **after hours inspectors** for evening and Sunday construction, not necessarily life threatening. (Most MPD officer do not understand that a permit is limited to hours/days.)

From a recent DCRA email: (emphasis mine) If a critical issue comes up during non-business hours, such as building issues ***posing a risk to the public***, please contact Homeland Security at (202) 727-6161 to reach a DCRA Duty Officer.

***With most of the problems from previous hearings are still unresolved, I regret to report that I have found another problem. My neighborhood was designated a **historic district** last summer, and implementing it went into effect five months ago. Permits are still being issued without historic review. I was led to believe it was a fixable IT issue, but the problem is more complex and needs immediate attention, and I implore you to to have DCRA act on this without delay. ***

Thank you again for your ongoing interest in this agency, and also the Franklin School.

Betsy McDaniel

Mr. Chairman,

First I apologize for the delay I providing documents. I really want to see some additional change within DCRA. I really believe that breaking up this agency would only benefit the residents and business owners. Due to the current size of this agency is a tremendous task to try to narrow down the specific areas that might be the most impactful in a short-term situation.

I would like to emphasize two critical areas. Inspections and Plan Review.

First with inspections, DCRA inspection staff simply cannot handle the volume of housing and construction inspections at its current level. Illegal construction is to be spread out through the construction inspectors. This has already been tried. On at least two occasions through my tenure at DCRA, management took this view to assign each inspector the task of addressing Illegal Construction complaints. The inspectors were not provided with adequate time in their schedules to spend the amount of time often required on each site and then create the files necessary if a stop work order was issued.

Once a stop work order is issued the clock begins to allow for the appeals process. Often times cases would be dismissed or fines significantly lowered. The amount of stop work orders issued dropped substantially as inspectors often would simply advise offenders to get the required permits.

Plan Review: Velocity should be stopped at once. Part of the purpose for the Homestart Act was to allow residents of the district a much more streamlined and efficient way to obtain plan review and inspections. DCRA developed a program that a was designed to work and work well. It is agreed that this program has had issues in the past but I believe that DCRA has made great strides to fix those issues by providing more oversight and increasing the standards of the agencies that are allowed to participant in the program.

The Velocity program has diverted essential staff away from one of the most broken areas of the agency to cater the larger developers. To accommodate this program DCRA has brought in contract plan review staff. If the Agency wants to implement this type of program it should take the opportunity to repair this broken division while it has the use of outside resources for plan review. Current staff should be provided with incentives to maintain continuing education and cross discipline training.

DCRA needs:

<u>ADMINISTRATIVE:</u>

1. Agency review and inventory all current positions and delete / reassign all unnecessary positions
2. Change DCMR to mandate Certificates of Inspection to be posted in all elevators for the public to view
3. Create a Board of Appeals as described in the model codes, make decisions public
4. Hold CCCB Board accountable for the length of time it takes to update and adopt new construction codes

5. Completely overhaul and update the permit fee schedule. Add additional fee to be set aside to home guaranty fund.
    a. Current permit fees require renovations to be a significantly higher cost than new construction.
6. Change DCMR to require a certificate of Occupancy for all one- and two-family dwellings
7. FOIA staff should be given training on permitting in order to be certain that all documents requested are provided.
    a. If they don't know the process how can they be sure they are providing the right documents. This is very important to homeowners trying to get information on their new homes. It creates confusion because they are often unsure of what to even ask for.

INSPECTIONS:

1. Need more CERTIFIED inspectors, both construction and property maintenance.
    a. Provide rigorous training program and certification program before they are allowed to perform inspections
2. Need dedicated Zoning inspectors. Construction inspectors are not given the training required to properly document many of the zoning issues found.
3. Refill all positions that were tasked to DGS for inspections
4. Add additional elevator inspectors, increase oversight here
5. Have a night shift for 2 or more property maintenance inspectors to properly address issues that arise during nights and weekends
6. Hire trained/certified inspectors for oversight of Special Inspections throughout the District.
    a. Special inspections can be considered to be one of the most critical components of construction. It encompasses underpinning, steel, concrete and fire stopping inspections. DCRA has currently tasked the Third Party agencies to ensure compliance of Special Inspections. Most Third Party Inspection agencies do not hold the required certifications or knowledge to know if this is done properly.
7. Put construction related Consumer Protection under illegal construction division.
    a. Currently this division is assigned under the Licensing division. These inspectors are unfamiliar with construction and inspections required. How can they properly access? These investigator often express frustration because they are ill equipped to be able to access the defects within the complaint and often have to return to seek advice from ICA. This process can lead to unintended misrepresentations and delays in the process causing even more animosity from all parties.
8. Illegal Construction inspectors should be fully certified for all aspects of the construction they are tasked to verify.
    a. It is often more than "Do they have a permit?"
    b. DCRA stated that Illegal construction would be assigned to all inspection staff. This has been attempted before. Staff is already overburdened and this action led to union complaints as inspectors were not provided the time to complete the paperwork. This led to faulty case files and dismissed cases.
9. Properties charged with illegal construction should be required to be held until all issues are resolved and compliance is met.

a. No additional permits should be allowed for any property charged with illegal construction that does not fully address the original infraction.

PLAN REVIEW:

1. Expand the Home Owners Center and include any occupied dwelling unit in this group
2. Refill all positions that were tasked to DGS for plan reviews
3. Expand the number of Prescreen Review staff.
    a. If you visit the second floor you will find that the longest wait times are for the PRC staff. PRC staff are the first step in plan review and this is often the most difficult process. This is the part of plan review that is often misunderstood. DCRA can state that reviews are delayed because they do not have the required documents or that the applicant has not provided enough information but often times it is delayed due to non-communication form the review staff. Email requests for information go unanswered or unclear direction is provided.
4. Delete the Velocity/ Expedition Programs and put all technology, employees, and effort afforded back to normal review process and improve for all
    a. If applicant wants expedited reviews advise to utilize the Third Party Plan review program previously in place.
    b. Delete Third Party Reviews and hire those reviewers
    c. Hire more certified plan reviewers if Velocity is allowed to continue.
5. Require all plans to be submitted electronically thru project dox to alleviate missing documents and transferring of records.
6. Allow Third Party Plan Review Agencies to use project Dox to prevent delays in these reviews.
    a. DCRA currently has the ability to allow users offsite to review plans. This has been a process when contract reviewers were utilized to deplete Plan review backlogs. Provide the use of this technology to allow Third Party agencies to perform reviews in line with sister agencies and prevent unwanted delays. (This is the original intent of the Homestart Act) DCRA has created internally its own Third Party Plan Review division.

Chairperson Mendelson and members of the Committee of the Whole:

Section 3307 of 12A DCMR establishes and guarantees DC adjacent property owners to proposed development certain rights as described in the Neighbor Notification Process that DCRA ignores on a daily basis.

Residents whose homes are adjacent to construction projects are provided notification routinely, often by flippers or others who only seek to profit from the proposed work without interest in the laws or zoning regulations of the city. The notification is often not understood by the recipients and, occasionally, people will reach out to professionals (as indicated in the form when neighbors have technical objections, must be provided by professionals). This can be a costly endeavor and automatically excludes those who cannot afford or understand how to engage properly in this process. It is one more way that DCRA defers its responsibility for oversight of proposed construction.

3307.2 Notification. Without limiting the protection requirement specified in Section 3307.1, where an owner (or the owner's authorized agent) seeks to undertake work on its premises that involves (a) the need to install structural support of an adjoining building or structure, including underpinning or (b) the need to support an adjacent premises (not including a public way), where excavation is to take place on the owner's premises, the owner seeking to undertake the work shall provide written notice to the owners of adjoining premises in accordance with this Section 3307.2.1 advising each owner of an adjacent premises of the proposed work and the need for specific measures to be undertaken to protect the adjoining premises, and, if applicable, requesting access to the adjoining premises to install structural support or to provide support for the excavation on the requesting owner's premises.

The Building Code states how the adjacent owner is to be notified. It can be problematic when those who seek permit approval either do not send the notification or provide incomplete or illegible information. Homeowners' complaints regarding incomplete or unreadable information are often ignored by DCRA or treated with contempt.
The code not only requires an initial submittal of the permit documents, but additional submittals to show ANY changes that are submitted as part of the permit application. This is rarely enforced, and when revisions are received, it's only after a formal complaint by the affected property owners.

3307.2.1 Form of notification. The owner undertaking the work shall notify the owner of the adjoining premises by personal delivery, courier or express mail service, with a copy to the code official not less than 30 days prior to permit issuance. This notification shall include a copy of all construction documents which relate to the structural support of the adjoining building or other structure or to the structural support of the excavation, including any updates or amendments to the work plan that have been submitted with the permit application(s). The home or business address of the owner of the adjoining premises shall be determined by the District's real property tax records.

Depending on the completeness and accuracy of the documents, submitting an objection can require extensive review and time. These technical objections are, by code, to be submitted to the code official by the property owner seeking a permit, which almost without fail are not shared with DCRA unless initiated by the objecting owner. Again, DCRA typically remains silent during this process unless an objecting owner is able to engage other city agents or officials. For example, if a Council member requests that DCRA respond to the affected or inquiring parties.[1] This is a waste of City resources to simply enforce standard procedure outlined in the Building Code.

In other cases, adjoining owners must appeal DCRA decisions at OAH to enforce their basic rights in the face of permit applications that intentionally mislead the Agency to avoid compliance with the Codes and Regulations of the District. Developers routinely submit incomplete and inaccurate drawings without fear of repercussions or refusal by DCRA who is by code authorized to revoke a permit or approval per 12A DCMR Section 105.6 [2] where that approval has been gained by the inaccuracies. Yet, DCRA routinely will defend these applicants with the claim that it is their duty to bring applications into compliance.

Rather than denying an applicant who is shown to have misled the Agency, permits are approved with prejudice against objecting neighbors. DCRA's General Counsel is often tasked with responding to neighbor concerns and their contempt is often noted. In one recent case at OAH, an objecting neighbor was not provided legible or complete Notification documents required by DCRA to correct errors in an approved permit. The errors were brought to light by the appealing neighbor. After it became clear to the neighbor that additional documentation existed that had not been provided for review, the adjoining owner again requested the required documentation.

DCRA Counsel's response epitomizes the attitude toward adjoining neighbors who insist their properties be protected from rogue development. Contrary to the Notification

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[1] See attached email from Council member Nadeau to affected constituents regarding 2920 18th Street, NW. A project that among other things proposes development that exceeds the RF-1 limits by having altered the grade to confirm a non-existing condition that would allow the addition of an illegal 4th story. The email suggests that DCRA reviewed the technical objections even though multiple emails were sent by the adjacent owner to DCRA to inquire as to the status of their review. The response from DCRA further suggests that the objections were reasonable and that changes were required by DCRA for the Developer to respond to prior to permit approval. In fact, many of the raised objections are traced in the Zoning comments by DCRA recorded on DCRA.DCCivicInsight.com.

The objecting owner at no time received a response from DCRA nor a follow-up Neighbor Notification to record those changes required by DCRA. A situation that is often repeated from project to project.

[2] 105.6 Revocation of Permits. The code official is authorized to revoke a permit or approval issued under the Construction Codes or the District of Columbia Zoning Regulations (11 DCMR) (the Zoning Regulations), for any of the following conditions:
1. Where there is a false statement or misrepresentation of fact, or other significant inaccuracy, in the application or on the plans on which a permit or approval was based, that substantively affected the approval, including, but not limited to, inaccuracies with respect to pre-existing conditions

procedure required for permit applicants in 12A DCMR, the response was that the required documents, if found, would be submitted to the neighbor only as part of Discovery.[3]

Submitted by:
Guillermo Rueda, AIA
2912 18th Street, NW

3307.2.2 Objections by owner of adjoining premises. The owner of adjoining premises shall have 30 days from the date that a notification complying with Section 3307.2.1 is delivered to object in writing to the owner seeking to undertake the work on the grounds that the proposed work plan will not protect the adjoining premises. The objection shall include technical support for the objecting owner's conclusions that the proposed work plan will not protect the adjoining premises. A copy of the objection of the owner of the adjoining premises, with supporting technical documentation, shall be provided to the code official by the owner seeking to undertake the work. The code official is authorized, but not required, to grant a reasonable extension of time to the owner receiving a notification under Section 3307.2, if necessary to complete the evaluation of the proposed work plan.

3307.2.2.1 Access to premises. Within the same 30-day period, the owner of adjoining premises shall indicate whether or not access to the adjoining premises is authorized, if such access is requested, and the conditions, if any, of such access.

3307.2.2.2 Resolution of objections. In situations where the owner of an adjoining premises objects pursuant to Section 3307.2.2, prior to permit issuance, the owner seeking to undertake the work shall elect:

1. *To modify the proposed work plan to incorporate any specific protective measures requested by the owner of the adjoining premises and amend the permit application(s) as necessary to update the work plan; or*
2. *To request a determination by the code official whether the specific measures requested by the owner of the adjoining premises are reasonably practicable and supported by technical documentation.*

If option two is elected, following the code official's determination, the owner seeking to undertake the work shall modify the proposed work plan, and amend the affected permit application(s) as necessary (a) to incorporate any specific measures deemed necessary by the code official to protect the adjoining premises; or (b) to forego any proposed work that involves the need for structural support of the adjoining building or structure or support of the adjacent premises.

3307.2.3.2 Failure to respond. If the owner of the adjoining premises does not respond within the 30-day period set forth in Section 3307.2.2, then the owner of the adjoining premises shall be deemed to have elected to make safe his, her or its premises, and shall execute such measures to make safe the premises without delay so as not to impede or materially delay the original construction, subject to the provisions of Sections 3307.2.3.3 and 3307.2.3.4.

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[3] See email thread with DCRA.

Gmail

Guillermo Rueda <g.rueda.aia@gmail.com>

FW: 2920 18th Street, NW permit issued

1 message

Nadeau, Brianne K. (Council) <BNadeau@dccouncil.us> Mon, Nov 19, 2018 at 4:32 PM
To: Stephanie Schwartz <stephanie.schwartz@gmail.com>
Cc: Guillermo Rueda <g.rueda.aia@gmail.com>

From: Bailey, Christopher (DCRA) <christopher.bailey@dc.gov>
Sent: Friday, November 9, 2018 6:21 PM
To: Nadeau, Brianne K. (Council) <BNadeau@DCCOUNCIL.US>; Bolling, Melinda (DCRA) <melinda.bolling@dc.gov>; mailbox1230@gmail.com
Cc: Bonam, Amanda (Council) <abonam@DCCOUNCIL.US>; Loggins, Michelle (Council) <mloggins@DCCOUNCIL.US>; Donkor, Patricia (DCRA) <patricia.donkor2@dc.gov>; Whitescarver, Clarence (DCRA) <clarence.whitescarver@dc.gov>; Bouldin-Carr, Sarah B. (DCRA) <sarah.bouldin-carr@dc.gov>
Subject: RE: 2920 18th Street, NW permit issued

Good evening to all, Please forward this email to any affected parties not listed. The affected neighbor is not copied

After investigation and review with the long history with 2920 18th St NW, together DCRA managers have concluded the following. The DCMR 12A Building Code, Section 3307 Protection of Adjoining Property was utilized in determining the evaluation.

Permit application B1809516 was opened on 5/29/2018 and was issued on 10/26/2018. Neighbor notification letters were received by the neighbors located at 2018 18th street, Noam Kutler and Stephanie Schwartz on May 29, 2018. Per section 3307.2.2.2, the owners of an adjoining premises objected to the proposed construction, the adjoining neighbors submitted technical objections on September 21, 2018. [redacted] a registered architect submitted responses and clarifications to the technical objections on October 10th 2018. (Both copies are attached) The owner seeking to undertake the work reviewed the technical objection letter and modified the construction documents to incorporate the protective measures requested. DCRA reviewed the objections requested by the owner of the adjoining premises and agreed they were reasonable. DCRA received modified construction and supporting documents with a technical objection response letter. After conducting a review of the modified application set, plan reviewers approved them and the permit was issued. Without resubmission to the objecting owner.

Please know that DCRA is committed to resolving any additional technical objections provided. As always DCRA will enforce the protection requirements for adjoining properties as specified in Section 3307. Thank you again for notifying DCRA. Moving forward DCRA would request that anyone associated with this address contact DCRA directly and our Illegal construction hotline @ (202) 442-STOP (7867) for any questions or concerns regarding any future issues.

Thank you.

Christopher Bailey| Deputy Building Official, for Permit Operations Division

Department of Consumer and Regulatory Affairs

Christopher.Bailey@dc.gov | 1100 4th St SW, 4th Floor, DC 20024

Gmail

Guillermo Rueda <g.rueda.aia@gmail.com>

Re: [redacted] v. DCRA (2910 18th Street, N.W.)

1 message

[redacted]

To: [redacted] (DCRA)" <[redacted]@dc.gov>
Cc: Guillermo Rueda <g.rueda.aia@gmail.com>

Tue, Feb 5, 2019 at 8:24 AM

[redacted]

If any such documents were submitted we should have received the immediately. It is not acceptable that they are withheld. Please advise me what you find and when they were submitted.

[redacted]

[redacted]

On Feb 5, 2019, at 8:13 AM, [redacted] (DCRA) [redacted] wrote:

Hello [redacted]

I will look in Projectdox for documents submitted by [redacted]. Any documents I locate will be provided to you as part of your discovery request.

Regards,

[redacted]

[redacted]]
Sent: Monday, February 04, 2019 10:22 PM
To: [redacted] (DCRA)
Cc: Guillermo Rueda
Subject: RE: [redacted] v. DCRA

CAUTION: This email originated from outside of the DC Government. Do not click on links or open attachments unless you recognize the sender and know that the content is safe. If you believe that this email is suspicious, please forward to phishing@dc.gov for additional analysis by OCTO Security Operations Center (SOC).

[redacted]

We have been led to believe that [redacted] submitted to DCRA additional information (including, at least, a plan of the bracing with dimensions and other information) that was not provided to [redacted] or to me. This leads us to believe that, in fact, the submission to DCRA is more complete than provided to my client. Please advise me whether this is true. If so, please provide all such documents and communications between DCRA and your office and Mr. [redacted], his counsel and his consultants, that were not provided to us, without additional delay.

Further, you have not responded to my communications to you. I would appreciate the courtesy of a response.

I will wait until the close of business on Thursday.

Thank you,

[redacted]

[redacted]

From: [redacted]
Sent: Thursday, January 31, 2019 10:42 AM
To: [redacted] (DCRA)' [redacted]@dc.gov>
Cc: Guillermo Rueda <g.rueda.aia@gmail.com>
Subject: RE: [redacted] v. DCRA

[redacted]

A week has passed and you have not responded to my letter. Neither my client nor I have received the full and legible plans from [redacted] or the full supporting documents.

Nevertheless, it is apparent that [redacted] simply re-submitted the plans and reports that he previously submitted to DCRA. Consequently, the submission is not responsive to the Notice of Correction and the permit should be revoked. Please send me a copy of the notice of revocation when it is issued.

Thank you

[redacted]

From: [redacted]
Sent: Thursday, January 24, 2019 7:45 PM
To: [redacted] (DCRA)' [redacted]@dc.gov>
Cc: Guillermo Rueda <g.rueda.ala@gmail.com>
Subject: [redacted] v. DCRA

Ms. [redacted]

Please see the attached letter.

While the second document refers to roof access, it contains the plans Kehoe sent.

[redacted]

main: 202.442.4400| desk: 202.442.4533

dcra.dc.gov

DCRA actively uses feedback to improve our delivery and services. Please take a minute to share your feedback on how we performed in our last engagement. Also, subscribe to receive DCRA news and updates.

Did you know that DC has the second lowest uninsured rate in the nation? Together, let's make DC #1. Get covered and stay covered at DCHealthLink.com or by calling (855) 532-5465. #GetCoveredDC, #StayCoveredDC

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2 attachments

2920 18th St NW - Response to Neighbors Technical Objections.pdf
124K

2918 Technical Objections to 2920 18th St NW.DOCX
27K

LEGAL COUNSEL for the ELDERLY

601 E Street, NW
Washington, DC 20049
202-434-2120
202-434-6464 fax
lce@aarp.org
www.aarp.org/lce

Performance Oversight Hearing on the Department of Consumer and Regulatory Affairs "What issues should the Committee Pursue?"

February 6, 2019

Committee of the Whole
Councilmember Phil Mendelson, Chairperson

Testimony of Daniel B. Palchick, Esq.,
Senior Staff Attorney, AARP Legal Counsel for the Elderly

Legal Counsel for the Elderly (LCE) is a non-profit provider of legal services to D.C. residents aged 60 plus, and an affiliate of AARP. LCE champions the dignity and rights of elderly District residents through free legal and social work services. Included among LCE's services is the Alternatives to Landlord/Tenant Court for the Elderly Project ("Alternatives Project"), which integrates social work and legal principles to prevent eviction of lower income elders. District agencies (the Superior Court, Office of Administrative Hearings, DC Office on Aging social service network, Department of Housing and Community Development and the Office of Tenant Advocate), legal and social service providers, and property managers refer tenants to the Alternatives Project upon identifying eviction risks like changes in patterns of rental payments for long-term tenants, decline in housekeeping, and accumulation of personal possessions, to provide alternatives to court intervention.

One of the most prevalent issues LCE encounters is substandard housing. LCE does not shy away from home visits, and what we see is appalling. We have clients dealing with no heat and no hot water during the winter months; rodent and insect infestation, including bed bugs; and water intrusion, with mold; These are just a few of the many types of shoddy housing that our District's most at-risk population are forced to live in. We advise our clients that they have rights enumerated by The District's Housing Code and Property Maintenance Code. These laws are designed to ensure that tenants are not subjected to poor housing conditions.

The Department of Consumer and Regulatory Affairs ("DCRA") is charged with many tasks, including policing landlords to ensure that they are providing safe and habitable rental units. However, DCRA consistently falls short on protecting District renters. This in turn has had a domino effect. Tenants no longer contact DCRA because they believe, based on past experience, that DCRA will not act. Landlords, in turn, ignore violation notices from DCRA because they know that DCRA will not enforce their notices. Rental units end up going into disrepair leaving the city with numerous blighted properties. In the end, displacement occurs.

LCE and other legal services organizations have testified repeatedly at oversight hearings about the shortcomings of DCRA. DCRA consistently claims that change is coming, but the same problems keep arising. I am hopeful that with the new executive team, DCRA will begin to provide solutions to tenant protections, rather than excuses.

This committee and DCRA should work together to improve in three areas which should enhance the housing for many of our district seniors. First, DCRA needs to continue to work with the legal services community to be more responsive to District tenants' needs. Second, DCRA must improve enforcement of the housing code and property maintenance code. Finally, DCRA must improve their record keeping for better data analysis and accountability on enforcement rates how the nuisance abatement fund is allocated.

DCRA Should Engage in Active Community Involvement

DCRA must have a strong working relationship with housing advocates. The prior Director of DCRA held quarterly meetings with local housing advocates and executive members of DCRA. Stakeholder meetings give advocates the opportunity to discuss DCRA policy issues and individual buildings that need immediate attention. Additionally we obtain DCRA's insight as to what to expect from DCRA in the future, including how to make DCRA more transparent to the community.

One such example was the implementation of the new property information system or PIVS 2.0. Shortly after PIVS 2.0 was rolled out, a glitch prevented previous housing code violations for properties from being uploaded. LCE had a client where we knew that DCRA issued a Notice of Violation in the past, but that was not recorded properly. I was able to provide this information to DCRA at our meeting and the glitch in the system was corrected.

DCRA's new leadership should continue to meet quarterly with housing advocates. On January 17, 2019, I reached out to Juanda Mixon with the office of the director for DCRA. I expressed a desire to continue with these meetings for the reasons I stated above. I apprised her of the former meetings and local advocates' wish to continue working with LCE. Our first meeting with the new executive team, including Interim Director Ernest Chrappah will be on Monday February 11, 2019. The hope is this is not a one-time meeting, but rather a continuation of the working relationship between DCRA and agencies charged with protecting tenants.

DCRA'S Should Promote Consistency and Enforcement

DCRA is the primary agency to ensure that district residents are living in safe and habitable housing. Residents should have faith that they can turn to

DCRA if their landlord is not keeping a unit in compliance with our local housing codes. DCRA's own mission statement states, "[D]iligent protection of health and safety and equitable administration of regulation and compliance in our District."[1] Yet, LCE seems to repeatedly report to this council that DCRA is no living up to its mission. Too often, our clients report that they no longer wish to contact DCRA because it does not result in change. The case study of Dahlgreen Courts confirms that DCRA has an enforcement problem.[2] The number one issue appears to be enforcement after an initial inspection.

When a tenant requests an inspection, they contact DCRA and provide the specific violations that they want inspected. Even though specific violations are reported, inspectors are supposed to conduct a full inspection, including all violations that exist in the unit. Inspectors are trained uniquely to know what constitutes a violation, and a complete inspection prevents having to continue to return for newly discovered issues. What our clients have witnessed is counter to this obligation imposed by DCRA. Inspectors generally spend about 15 minutes at the unit, and only address the reported issues. Many of our clients have heard that the reason for the quick inspection is due to the number of inspections that are scheduled per day for each inspector. Tenants therefore find themselves continually calling DCRA for additional inspections, leading to multiple Notice of Violations ("NOV") issued to the landlord. This inefficient process leads to a delay in the abatement of violations. Additionally, having to request re-inspections further burdens the inspectors' schedules. DCRA should provide regular training to their inspectors on the importance of performing one complete inspection to avoid the need of re-inspection. If inspectors still feel that they do not have the time to conduct a full investigation, then DCRA's budget should allow for the hiring of additional inspectors.

When a Notice of Violation is issued, it should be incumbent on landlords to correct the violation to avoid penalties from DCRA. This is because that DCRA has the enforcement mechanism to cite and fine violators of the housing code. Additionally, if there is a particular bad landlord failing to correct violations listed in the NOV, DCRA can take it upon them to make the repairs and get a lien on the property against the landlord. DCRA's enforcement arm is underutilized and inconsistent, leaving the tenant to endure poor housing conditions for an extended period.

Often times DCRA does not provide information to the public or the tenant as to inspections that result in fines, nor is the policy for when a Notice of Infraction is issued, or why, available. Specifically, NOVs, with a deadline to

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[1] DCRA Mission Statement; https://dcra.dc.gov/page/about-dcra (2/5/19)

[2] Kathleen Patterson, *Housing Code Enforcement; A Case Study of Dahlgreen Courts.* (Sept. 24, 2018).

abate the NOVs, may only be sent to the landlord, leaving the tenant in the dark about what needs to be repair and when it needs to be repaired by. Furthermore, landlords can seek an extension of time to make the needed repairs without informing the tenant. Landlords take advantage of DCRA's relaxed enforcement by not making any of the repairs and continually seeking extensions of time. Additionally, our clients complain that DCRA does not appear to be conducting a follow-up investigation to ensure that the landlord is making the repairs. The case study of Dahlgreen Courts is consistent with this narrative. At Dahlgreen Courts DCRA inspectors issued 24 NOV for 17 units. [3] There was a total of 105 violations found in the apartment complex with a potential fine of $36,300. [4] After 8 months, DCRA only collected $2,500 in fines.[5]

The case study of Dahlgreen Courts does an excellent job of demonstrating how lack of enforcement leads to waste by the agency and displacement of tenants. While it is still preferable that a new agency which specializes in handling regulatory enforcement for housing codes be created, until that agency exists, this Committee should ensure that DCRA is committed to quick and effective housing code enforcement.

DCRA Needs to Engage in Thorough Data Collection

To evaluate outcomes effectively, there must be strong data collection. Advocates, such as LCE, have requested from DCRA consistently information to assess their enforcement mechanisms. The data we seek includes: NOVs issued in a year; how many of those NOVs were re-inspected; how many properties were abated by the housing provider after the first NOV; how many of those properties were issued Notice of Infractions; how many of those properties were forwarded to enforcement; how many of those properties were fines collected; and how many of those properties DCRA placed a lien on. The lack of DCRA's record keeping has been a point of frustration with advocates and consumers, as stymies agency accountability.

One particular request is for this Committee to examine the use of the Nuisance Abatement Fund ("the Fund"). Under the summary of services on DCRA's website, it states that DCRA can abate housing code violations when necessary.[6] The intention of the fund is to give DCRA the ability to correct

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[3] *Id.* at 1.

[4] *Id.*

[5] *Id.*

[6] DCRA Website Summary of Services: https://dcra.dc.gov/page/about-dcra (2/5/19).

housing code violations on their own, when the landlord or property owner fails to do so. If used correctly, the Fund can be self-sustainable, but DCRA's present use of the Fund creates waste. There is a variety of resources that goes into the Fund. A portion of all fees from registering a vacant property contributes to the Fund. Fees from licensing the property with the Rental Accommodations Division are allocated to the Fund. Finally, a portion of housing code violations fees and proactive inspections fees contributes to the fund. The fees collected are the most important because they are what makes the fund sustainable. If DCRA is active in collecting those fees then they will have enough to make repairs when needed. The problem is that DCRA fails to collect fees, resulting in a depletion of the fund.

The other issue is how the fund is administered. When DCRA intends to use the Fund they assign the task to the "abatement team." The abatement team has the authority to draw from the Fund. Rather than the Fund just going to repairs, it is also used for a portion of the abatement team salaries, trainings, supplies, and uniforms. The Fund should be allocated to repairs before it is used for other means. This should incentives the collection of fines for the Fund. Additionally, this Committee should request at Oversight hearings data relating to the use of the Fund.

Finally, when advocates have pressed former Director Bolling as to why DCRA does not abate more properties and attach tax liens against housing providers who refuse to make repairs, she rationalized that DCRA does not see a return on the investment. In other words, DCRA's tax lien scheme is similar to a home with multiple mortgages. DCRA would not be the primary lien holder, which results in an inability to collect on their lien. LCE has not had been able to determine the veracity of this statement. This Committee should monitor the use and collection of the Fund.

Conclusion

For the above reasons, we recommend continued oversight of the Department of Consumer and Regulatory Affairs with a focus on community involvement, enforcement, and data collection. Public trust in DCRA needs to be restored in order for them to live up to their mission. This can only occur if DCRA is committed to thorough inspections and the willingness to impose civil fines to those who refuse to provide safe and habitable housing. Hopefully, the change in leadership will create a positive change within DCRA.

Sincerely,

Daniel B. Palchick
Senior Staff Attorney

GEORGETOWN
BUSINESS IMPROVEMENT DISTRICT

GEORGETOWNDC.COM

Testimony of the Georgetown Business Improvement District
Submitted for the Record
February 20, 2019

Committee of the Whole
Chairman Phil Mendelson, Chair
Public Oversight Hearing: "The Department of Consumer and Regulatory Affairs: What Issues Should the Committee Pursue?"

The Georgetown Business Improvement District submits the following testimony for the record in regards to the Committee of the Whole Public Oversight Hearing: "The Department of Consumer and Regulatory Affairs: What Issues Should the Committee Pursue?"

The Georgetown BID has previously testified before the Committee about DCRA's Vacant Property Enforcement Program. The Georgetown BID supports DCRA's goal to bring vacant and blighted properties into productive use and reduce the negative impacts of vacant properties on neighborhoods. We also appreciate the desire of residents to ensure nuisance properties are abated as quickly as possible.

However, we have concerns that DCRA is improperly identifying many commercial properties as vacant, despite the properties exhibiting clear evidence of exemption from enforcement, including active marketing for lease, active building renovations, and/or active proceedings before the Historic Preservation Review Board or Commission of Fine Arts. In these cases, DCRA inspectors have placed vacant property stickers on buildings, which create a negative impact on the appearance and quality of commercial districts. Property owners must appeal the vacancy designation, which can be lengthy. Some property owners have expressed concerns that DCRA staff do not respond to their appeals in a timely manner. In some cases, property owners have improperly received real property tax bills at the Class 3 rate and have had to wait several months to receive an exemption and a corrected tax bill.

On December 18, 2018, the Council passed Bill 22-317, the Department of Consumer and Regulatory Affairs Omnibus Amendment Act of 2018. This bill included provisions to make the vacant property stickers easier to remove in cases in which a building is improperly identified as vacant. It also requires the posting of vacant property designations on a public website. These are welcome improvements, but we believe there are remaining issues with the way DCRA identifies whether a property is vacant.

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In many cases, DCRA inspectors will place a sticker on a building and designate it as vacant when it has active building permits posted, has a public notice posted that the property has a pending application before HPRB or CFA, or has a leasing sign with a known commercial brokerage. These are all criteria for exemption from enforcement, but that exemption can only occur after DCRA inspects the building, tags it as vacant, and notifies the owner. The owner must then submit a form to DCRA appealing the vacancy designation and certifying that the property is exempt from enforcement.

In the case of exemption for building renovations, the owner must submit copies of the valid permits, which must also be posted on the building. If DCRA can use these permits to accept an exemption appeal, the inspectors should be able to use those same permits when posted on the building to exempt the property upon the initial inspection and not post the vacancy sticker. DCRA could then notify the owner that the building was inspected, that it was determined to be exempt, and that the exemption period has begun. This may require changes to the service of process requirements, but we believe it will (1) reduce instances of properties receiving vacant stickers that satisfy the exemption requirement, (2) reduce the time property owners spend appealing vacant designations, and (3) reduce the time DCRA staff spend responding to those appeals.

Furthermore, DCRA could provide an exemption period for building owners that have applied for permits but not yet received them. We share DCRA's concern that delinquent owners may use permits and permit applications to avoid vacancy enforcement without actually improving their buildings. We believe, however, that there can be some consideration of good faith efforts by owners to obtain permits and make improvements to a building without the building being classified as vacant.

For properties that are for lease or sale, DCRA requires a MRIS or MLS electronic listing to make an exemption, which is not used for commercial leasing. While DCRA staff may accept another form of listing, the Vacant Property Response Form should be updated to include acceptable forms of documentation for commercial leasing and sales.

In commercial districts across the city, property owners and tenants regularly renovate buildings during a period of tenant turnover. These buildings may be temporary unoccupied but generally are not nuisance properties that need to be abated by posting vacant property stickers and assessing higher tax rates. While there are delinquent owners with vacant properties in poor condition that create negative impacts on neighborhoods, there are also many owners actively working to lease, renovate, improve, and use their buildings. We strongly urge the committee to continue working with DCRA to improve the Vacant Building Enforcement Program.

5301 Connecticut Ave. NW Overview and Sideview of debris, demolition and damage

The Committee of the Whole, Council of the District of Columbia
Suite 410
John A. Wilson Building1350 Pennsylvania Ave. NW
Washington, DC 20004

Dear Council:

Thank you for the opportunity to submit written testimony following the hearing about DCRA.

I've been a resident of DC for more than 30 years and currently live at 3729 Jenifer St. NW, intersecting at the corner of Connecticut Avenue.

What has happened to our neighborhood in the past three years is a travesty and clearly the lack of oversight and the permitting process in DC has allowed it to continue. There was once a house at 5301 Connecticut Ave. that stood as a jewel of the new development at the turn of the last century that was happening on Connecticut Avenue. Those homes were developed by a man named Harry Wardman. Many people who move to DC quickly learn the name and the value of a house built by Wardman. In fact the Marriott hotel further down on Connecticut Avenue is named for Wardman.

Next week, it will be exactly three years that our neighborhood learned, on Feb. 27, 2016, what was planned for the Northeast corner of Connecticut Ave. That an 8-unit condominium building would replace the semi-attached Wardman home that stood there for more than 100 years. We understand that the zoning on this block allows for this. However, the permit that DCRA issued was not a raze permit. It was supposed to be for renovation, remodel and addition. The condominiums all along the 5200 block of Connecticut Ave. have been respectful of the original facades of the homes and the apartments go up and to the back but the original architecture is incorporated and fits in with the neighborhood. However the entire house at 5301 Connecticut was taken down. And this house was torn down not by any kind of professional crews with proper safety gear and proper provisions made to deal with environmentally (and humanly) hazardous materials. It appeared that day laborers were used and there was no attempt to minimize the impact of the demolition on the neighborhood nor on the environment. Instead of finding a way to preserve elements of this well-built home and ensure that they went onto a second life, everything was simply ripped and torn out.

In these older homes, we all know that they contain lead paint and other environmental concerns. In fact the district has all kinds of rules and regulations for dealing with lead paint and lead in the pipes. However, our children have now been exposed to lead paint particles and other debris for THREE years. This debris just flies into the air because the property has been sitting in final stages of demolition with no clean-up. The attached photos show the debris of timber, paint, piping, etc. as well as the flimsy fencing. How can this be allowed in a neighborhood with a daycare center three doors down and the 3700 block of Jenifer with quite a large number of children.

5301 Connecticut Ave. NW Overview and Sideview of debris, demolition and damage

Also, the manner in which this house was torn down was so bad that it irreparably damaged the attached home. Why the district allows attached homes to try to be detached is beyond me. This is a process like separating co-joined twins. There are shared elements and a symbiosis that happens with these homes. Any kind of separation, just like an operation should involve experts and examination and careful deliberation. The immediate result was an open basement pit that filled with snow and water and leaked into the house next-door. There was Tyvek placed against the formerly co-joined wall and adhered with duct tape!!! You can still see that improper Tyvek installation in the photo. The shoddy demolition severely damaged the attached house and the tenants had to move out. The developers subsequently settled with the absentee (not in DC) owner and purchased the home. Now that house sits there abandoned, appearing to be rotting and settling into the ground — perhaps the developer is just simply waiting for it to fall so that the district will look sideways while another Wardman home is razed.

I understand we do not live in a historic neighborhood and that the district needs to have high density living not only for environmental urban reasons but also for a tax base. And you can see that that has been done much more successfully in the 5200 block of Connecticut Avenue where the façades of the older homes have been maintained while still being turned into multiple unit condominiums and apartment rentals.

All of our calls as a neighborhood to DCRA and for petitions to help solve the situation have been ignored and fallen on deaf ears and we are told nothing can be done. In the meantime, a shoddy fence was put up, But the lot at 5301 was turned into a staging area for construction that was done at 5309 Connecticut Ave. which was where another home once stood and was knocked down to make way for new condominiums. Following the completion of that construction, the lot still had a truck with Maryland plates parked there for months and months along with a smelly Port-a-Pot that has been there for THREE years. Once in a while workers come along and seem to be doing something,..

The corner of 5301 is a sad and dangerous lot filled with possibly hazardous debris. I plead our case with you and ask why are developers allowed to do this? If a homeowner does not shower snow, mow the grass or otherwise maintain their property, there are penalties. Please let us know what can be done here. While construction is pending, can't the city mandate that this lot be cleaned up? Please look at the pictures and see what we see every single day.

In appreciation of your consideration,

Melinda Machado
Homeowner and District Taxpayer

5301 Connecticut Ave. NW Overview and Sideview of debris, demolition and damage